85 121 B (10)

108 pgs No. 06-1204

FILED
JAN 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

REPUBLIC OF THE PHILIPPINES, PHILIPPINE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PHILIPPINE NATIONAL BANK, AND ARELMA, INC.,

Petitioners,

v.

MARIANO J. PIMENTEL, THE ESTATE OF ROGER ROXAS, AND GOLDEN BUDHA CORP.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

STEPHEN V. BOMSE
Counsel of Record
JOSHUA E. ROSENKRANZ
RACHEL M. JONES
ADAM J. GROMFIN
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104
(415) 772-6000
Counsel for Petitioners Republic of the Philippines and PCGG

KENNETH S. GELLER
CHARLES A. ROTHFELD
DAVID M. GOSSETT
ELIZABETH G. OYER
Mayer Brown LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3000
Counsel for Petitioners Philippine National Bank and Arelma, Inc.

ROBERT A. SWIFT
Counsel of Record
CRAIG W. HILLWIG
Kohn, Swift, & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107
(215) 238-1700

SHERRY P. BRODER
841 Bishop Street, Suite 800
Honolulu, HI 96813
(808) 531-8411

JON M. VAN DYKE
2215 Dole Street
Honolulu, HI 96822
(808) 956-8509
Counsel for Respondent Mariano J. Pimentel

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002
PETITION FOR WRIT OF CERTIORARI FILED MARCH 5, 2007
CERTIORARI GRANTED DECEMBER 3, 2007

TABLE OF CONTENTS

Page

A. Relevant Docket Entries: U.S. District Court for the District of Hawaii 1

B. Relevant Docket Entries: U.S. Court of Appeals for the Ninth Circuit 5

C. Republic's Motion to Dismiss, filed Mar. 5, 2001 9

D. Merrill Lynch's Amended Complaint, filed June 4, 2001 12

E. Order discharging Merrill Lynch, filed July 3, 2003 22

F. Order of the U.S. Court of Appeals, filed Feb. 20, 2004 25

G. Selected exhibits filed by Pimentel at trial, Feb. 24, 2004:

Exh. 2 Letter from J.L. Sunier to J. Campos, Sept. 21, 1972 28

Exh. 3 Authorization of Arelma Inc. to open account with Merrill Lynch, Sept. 25, 1972 31

Exh. 9 Check sent to Merrill Lynch, Nov. 20, 1972 34

Exh. 23 Letter from P. Wachendorfer to Arelma Inc., Oct. 21, 1987 35

Exh. 27 Limited Power of Attorney by I.R. Marcos, July 25, 1997 37

Exh. 28 Limited Power of Attorney by F.R. Marcos, Aug. 19, 1997 40

Exh. 29 Memorandum re: Arelma by J.L. Sunier, Nov. 3, 1997 43

TABLE OF CONTENTS—continued

Page

Exh. 35 Final Judgment in *Hilao v. Estate of Marcos*, Feb. 3, 1995 49

Exh. 44 Response of Suntrust Investment Co. to Request for Admission from Estate of Roger Roxas and Golden Budha Corp. (excerpt), Mar. 22, 2001 62

Exh. 47 Decision of the Swiss Federal Court in Swiss Federal Office of Police Matters v. Fondation Maler and Arelma Inc., et al., Dec. 19, 1997 64

H. Judgment of District Court, filed July 12, 2004 90

I. Pimentel's Motion to dismiss appeal, filed Aug. 16, 2004.....92

J. Amendment to Findings of Fact and Conclusions of Law, filed Aug. 30, 2004 99

K. Order of the U.S. Court of Appeals, denying Pimentel's motion to dismiss, filed Oct. 5, 2004 101

L. Order in the Multi-District Litigation regarding disbursement, filed June 26, 2006 103

NOTICE

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari:

TABLE OF CONTENTS—continued

Page

A. Order and Amended Opinion of the U.S. Court of Appeals for the Ninth Circuit, filed Sept. 12, 2006 ..... 1a

B. Order and Amended Opinion of the U.S. Court of Appeals for the Ninth Circuit, filed May 9, 2006 ..... 12a

C. Opinion of the U.S. Court of Appeals for the Ninth Circuit, filed May 4, 2006 ..... 21a

D. Opinion of the U.S. Court of Appeals for the Ninth Circuit reversing dismissal of the Republic of the Philippines and the Philippines Presidential Commission on Good Government, filed Oct. 31, 2002 ..... 30a

E. Findings of Fact and Conclusions of Law after bench trial before the U.S. District Court for the District of Hawaii, filed July 12, 2004 ..... 43a

F. Findings of Fact and Conclusions of Law regarding Motion to Dismiss under Rule 19(b), proposed by Pimentel and Signed by the U.S. District Court for the District of Hawaii on Aug. 14, 2003 ..... 55a

G. Order of the U.S. Court of Appeals for the Ninth Circuit denying petitions for rehearing and rehearing en banc, filed Nov. 3, 2006 ..... 61a

H. Federal Rule of Civil Procedure 19 (prior to the 2007 amendment) 63a

I. Diplomatic Note from the Republic of the Philippines to the U.S. Department of State, dated Feb. 5, 2007 ..... 65a

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

No. 1:00.cv.00595.MLR

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., *ET AL.*,

Defendants.

RELEVANT DOCKET ENTRIES*

DATE	#	DOCKET ENTRY
9/14/00	1	COMPLAINT FOR INTERPLEADER filed by plaintiff Merrill Lynch
9/14/00	4	ORDER authorizing deposit of contested funds
10/10/00	6	ANSWER filed by defendant Mariano J. Pimentel ("Pimentel")

---

* For the Court's convenience, the docket entries set forth below have been revised and reworded to reflect more accurately and clearly the actual entries contained in the lower court's docket.

DATE	#	DOCKET ENTRY
10/30/00	8	ANSWER and CLAIM filed by Estate of Roger Roxas and Golden Budha Corporation
1/25/01	27	ANSWER filed by defendant ENC Corporation
3/5/01	32	MOTION TO DISMISS, TRANSFER, OR STAY filed by Republic of the Philippines ("Republic")
3/13/01	38	OPPOSITION to motion to dismiss filed by Pimentel
3/13/01	40	OPPOSITION to motion to dismiss filed by Merrill Lynch
3/20/01	50	REPLY in favor of motion to dismiss filed by Republic
4/05/01	61	MOTION TO SEVER defendants Republic and Philippine Presidential Commission on Good Government ("PCGG") filed by Pimentel
4/05/01	62	MOTION TO JOIN as defendant Philippine National Bank ("PNB") filed by Pimentel
5/29/01	100	ORDER granting motion to join PNB as defendant
6/4/01	102	AMENDED COMPLAINT FOR INTERPLEADER filed by plaintiff Merrill Lynch
7/13/01	118	MOTION TO DISMISS Amended

DATE	#	DOCKET ENTRY
		Complaint by Arelma, S.A. and PNB
8/1/01	120	MOTION TO RECOGNIZE SOVEREIGN IMMUNITY filed by Republic and PCGG
12/20/01	185	ORDER dismissing the Republic and PCGG on the merits and denying as moot their motion to dismiss on sovereign immunity grounds
1/18/02	195	NOTICE OF INTERLOCUTORY APPEAL filed by Republic and PCGG
3/17/03	295	ACKNOWLEDGMENT of judgment by Court of Appeals reversing and remanding the order dismissing the Republic and PCGG on the merits and entering a stay
4/25/03	297	MOTION TO VACATE STAY filed by defendant Pimentel
5/30/03	305	OPPOSITION to motion to vacate stay filed by Republic and PCGG
5/30/03	306	OPPOSITION to motion to vacate stay filed by defendant Suntrust
5/30/03	308	OPPOSITION to motion to vacate stay filed by Arelma and PNB
5/30/03	309	OPPOSITION to motion to vacate stay filed by Merrill Lynch
6/9/03	312	REPLY in support of motion to vacate stay filed by Pimentel

DATE	#	DOCKET ENTRY
6/20/03	319	ORDER vacating the stay
7/03/03	320	ORDER discharging Merrill Lynch
8/7/03	326	MINUTES OF HEARING HELD 8/7/03 on Motion of Arelma and PNB to Dismiss Pursuant to Rule 19(b); Motion DENIED; Counsel for Pimentel directed to prepare Order
8/7/03	327	FINDINGS OF FACT AND CONCLUSIONS OF LAW denying motion to dismiss under Rule 19(b) (signed by Judge Real on 8/14/03)
8/14/03	329	OBJECTIONS to Findings of Fact and Conclusions of Law filed by Arelma and PNB
2/24/04	372	BENCH TRIAL
7/12/04	388	FINDINGS OF FACT AND CONCLUSIONS OF LAW awarding all assets to Pimentel
7/12/04	389	JUDGMENT for claimant Pimentel
7/14/04	390	NOTICE OF APPEAL by Arelma and PNB
7/16/04	391	NOTICE OF APPEAL by Republic and PCGG
7/30/04	392	NOTICE OF APPEAL by Estate of Roger Roxas and Golden Budha Corp.
8/30/04	403	AMENDMENT to findings of fact and conclusions of law

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 04-16401, 04-16503, 04-16538

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff-Appellee,

v.

ENC CORPORATION, *ET AL.*,

Defendants.

RELEVANT DOCKET ENTRIES*

DATE	DOCKET ENTRY
7/19/04	DOCKETED CAUSE
7/19/04	EMERGENCY MOTION FOR STAY PENDING APPEAL filed by Appellants Arelma and PNB
7/27/04	STIPULATION by the parties to transfer funds to the clerk for the U.S. District Court for the District of Hawaii and to

* For the Court's convenience, the docket entries set forth below have been revised and reworded to reflect more accurately and clearly the actual entries contained in the lower court's docket.

DATE	DOCKET ENTRY
	expedite briefing and argument
8/2/04	ORDER denying emergency motion as unnecessary in light of stipulation
8/16/04	MOTION TO DISMISS 04-16503 filed by Pimentel
9/20/04	OPPOSITION to Pimentel's motion to dismiss 04-16503 filed by Republic and PCGG
9/30/04	REPLY in support of motion to dismiss 04-16503 filed by Pimentel
10/5/04	ORDER consolidating appeals 04-16401, 04-16503, and 04-16538, and denying without prejudice Pimentel's motion to dismiss appeal 04-16503 without prejudice
10/29/04	BRIEF submitted by Estate of Roger Roxas and Golden Budha Corp. in 04-16538 (filed 11/29/04)
10/29/04	BRIEF filed by Arelma and PNB in 04-16401
11/1/04	BRIEF filed by Republic and PCGG in 04-16503
11/30/04	BRIEF submitted by Pimentel (filed 12/21/04)
12/21/04	REPLY BRIEF filed by Estate of Roger Roxas and Golden Budha Corp.
12/23/04	REPLY BRIEF filed by Republic and PCGG
12/27/04	REPLY BRIEF filed by Arelma and PNB

DATE	DOCKET ENTRY
2/22/05	LETTER received from Merrill Lynch informing the court that it will not be filing a brief
3/15/05	ARGUED AND SUBMITTED to John T. Noonan, Sidney R. Thomas, and James L. Robart
5/4/06	OPINION affirming the district court
5/9/06	ORDER amending the opinion filed on 5/4/06
5/17/06	PETITION FOR REHEARING AND REHEARING EN BANC filed by Republic and PCGG
5/19/06	PETITION FOR REHEARING AND REHEARING EN BANC filed by Golden Budha Corp.
6/15/06	EMERGENCY MOTION to stay execution of district court's judgment filed by PNB, Republic, and PCGG
6/16/06	ORDER directing Pimentel to respond to petitions for rehearing and rehearing en banc
6/22/06	ORDER granting stay of execution of judgment
7/10/06	OPPOSITION to petition submitted by Pimentel (filed 7/18/06)
7/12/06	REPLY in favor of petition submitted by PNB, Republic, and PCGG (filed 8/2/06)
9/12/06	ORDER withdrawing opinion filed on

DATE	DOCKET ENTRY
	5/4/06 and amended on 5/9/06, filing amended opinion, denying petitions for rehearing and rehearing en banc.
9/19/06	MOTION to stay further action pending petition for certiorari filed by Republic and PCGG
9/19/06	PETITION FOR REHEARING AND REHEARING EN BANC filed by Republic and PCGG
9/25/06	OPPOSITION to petition filed by Pimentel
10/3/06	ORDER staying mandate pending filing of petition for certiorari
11/3/06	ORDER denying petitions for rehearing en banc
3/23/07	MANDATE issued
4/9/07	ORDER recalling mandate, which was issued prematurely
12/10/07	NOTICE received from Supreme Court that petition for writ of certiorari was granted on 12/3/07

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. CV00-595MLR

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA, INC., *ET AL.*,

Defendants.

DEFENDANTS THE REPUBLIC OF THE PHILIPPINES' AND THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT'S MOTION TO DISMISS, TRANSFER OR STAY AND FOR RECUSAL OF THE HONORABLE MANUEL L. REAL

Come now Defendants the Republic of the Philippines (the "Republic") and the Presidential Commission on Good Government ("PCGG"), by and through their attorneys, and hereby move this Court for an order dismissing, transferring, or staying this action. Additionally, the Republic and PCGG respectfully request that the Honorable Manual L. Real recuse himself from all further proceedings in this action.

This motion is made pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and Sections 455 and 1406 of Title 28, United States Code (28 U.S.C. §§455 and 1406).

This is an action in interpleader concerning funds held in the name of Arelma S.A., a Panamanian corporation created in Switzerland by former Philippine President Ferdinand Marcos. The funds belong to the Philippines; they were stolen by Marcos.

Any order purporting to adjudicate rights to Arelma would directly interfere both with Swiss orders directing that the matter be determined in the Philippines, and with the proceedings in the Philippines undertaken in accordance with the Swiss orders. This action therefore should be dismissed on act of state grounds, and by reason of international comity. At a minimum, the action should be stayed pending the outcome of the proceedings in the Philippines.

This action also should be dismissed, or transferred, for improper venue. The Arelma assets were not located in this District when the action was filed, none of the events giving rise to this action occurred here, and no proper party is a resident of Hawaii. If not dismissed, this action should be transferred to a venue where it might have been brought, either the Southern District of New York or the District of Columbia.

This Court also should recuse itself. Its conduct in connection with this action has been such that a reasonable person with knowledge of the facts would conclude that its impartiality might reasonably be questioned.

This motion is based upon the Notice, the supporting affidavits and exhibits submitted herewith, the Memorandum of Law in Support of this Motion, and all other papers, pleadings and documents on file in this action.

Dated at Honolulu, Hawaii, March 5, 2001.

s/Matthew J. Viola
MATTHEW J. VIOLA

Attorney for Defendants the Republic of the Philippines and the Presidential Commission on Good Government

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. CV00-00595 MLR

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., [*ET AL.*,]

Defendants.

AMENDED COMPLAINT FOR INTERPLEADER

Plaintiff Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), by its attorneys, Cades Schutte Fleming & Wright, brings this action for interpleader pursuant to 28 U.S.C. § 1335(a) or, in the alternative, Rule 22 of the Federal Rules of Civil Procedure, seeking declaratory, injunctive and other relief against the defendants named herein, and complains and alleges as follows:

THE PARTIES

The Plaintiff-Stakeholder

1. Merrill Lynch is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York.. Merrill Lynch is the stakeholder in this

interpleader action with respect to assets held in a securities account (the "Account") at Merrill Lynch in the name of Arelma Inc., account number 165-07312. Merrill Lynch asserts no claim to such assets.

The Defendants-Claimants

2. Upon information and belief, Arelma Inc. a/k/a Arelma S.A. ("Arelma") is a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Alosemena y Calle 41 Este, No. 40-59 Pte al Colegio Irnrneculada, Panama I. Rep. de Panama, and a mailing address at c/o Suntrust Investment Co. S.A., rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland.

3. Upon information and belief, Suntrust Investment Co. S.A. ("Suntrust") is a corporation organized and existing under the laws of Switzerland with an address at rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland.

4. Upon information and belief, John K. Burns is a citizen of the United States, with an address at 300 Wacker Drive, Suite 900, Chicago, Illinois 60606.

5. Upon information and belief, Imelda R. Marcos and Ferdinand R. Marcos, Jr. are citizens of the Republic of the Philippines, are former residents of the State of Hawaii, are currently residing in the Republic of the Philippines, are legal representatives of the Estate of Ferdinand E. Marcos (the "Estate"), and are beneficiaries of the Estate.

6. Upon information and belief, Maria Imelda Marcos and Irene Marcos Araneta are citizens of the Republic of the Philippines and are beneficiaries of the Estate.

7. Upon information and belief, the Presidential Commission on Good Government ("PCGG") is a government agency of the Republic of the Philippines, with a mailing address at 2433 Pali Highway, Honolulu, Hawaii 96817.

8. Upon information and belief, the Republic of the Philippines maintains consular offices at 2433 Pali Highway, Honolulu, Hawaii 96817.

9. Upon information and belief, Frontier Risk Capital Management L.L.C. is a limited liability company organized and existing under the laws of the State of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, Nevada 89511, and an address at 300 Wacker Drive, Suite 900, Chicago, Illinois 60606.

10. Upon information and belief, ENC Corporation is a corporation organized and existing under the laws of the State of Maryland, with an address at 232 Paula Lynn Drive, Silver Spring, Maryland 20904.

11. Upon information and belief, Grosvenor Capital Ltd. is a company organized and existing under the laws of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom.

12. Upon information and belief, the personal representative of the Estate of Roger Roxas is Felix Dacanay with an address at 9932 Moorings Dr., Jacksonville, Florida 32257.

13. Upon information and belief, the Golden Budha Corporation is a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue

Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, Georgia 30113.

14. Upon information and belief, Mariano J. Pimentel is a citizen of the Republic of the Philippines, residing in Honolulu, Hawaii, and is a member of the plaintiff class that obtained a Judgment against the Estate on February 3, 1995 in *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, MDL No. 840 (the "Judgment").

15. Upon information and belief, the Philippine National Bank is an agency or instrumentality of the Republic of the Philippines and a Hawaii-licensed foreign bank agency maintaining an office at 1145 Bishop Street, Honolulu, Hawaii 96813.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1335(a) because the amount in controversy exceeds $500, at least two of the defendants are adverse claimants of diverse citizenship, and Merrill Lynch stands ready to deliver the assets in the Account into the Registry of the Court. Alternatively, this Court has subject matter jurisdiction over this action under Rule 22 of the Federal Rules of Civil Procedure pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds $75,000, and the stakeholder, Merrill Lynch, is a citizen of a different state from every defendant.

17. This Court has personal jurisdiction over the defendants residing within or who may he found within the United States pursuant to 28 U.S.C. § 2361, and over all defendants pursuant to 28 U.S.C. § 1655 because this action concerns the enforcement of claims to property that will be within the District

of Hawaii upon deposit of the assets in the Account with the Registry of the Court. This Court has in rem jurisdiction over the res at issue in this action pursuant to 28 U.S.C. § 1655.

18. Venue in this Court is proper under 28 U.S.C. § 1397 because one or more defendants reside in the District of Hawaii, under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the District of Hawaii, under 28 U.S.C. § 1391(b)(2), 28 U.S.C. § 1391(f)(1) and 28 U.S.C. §1655 because the property that is the subject of this action will be situated within the District of Hawaii upon deposit of the assets in the Account with the Registry of the Court, under 28 U.S.C. § 1391(d) because certain adverse claimants are alien persons or entities, and under 28 U.S.C. § 1391(f)(3) because certain adverse claimants are a foreign state or an agency of a foreign state doing business in the District of Hawaii.

FACTUAL ALLEGATIONS

19. The Account is maintained at Merrill Lynch in the name of Arelma Inc.

20. This action involves a dispute as to the rightful owner or owners of the assets in the Account. Information received by Merrill Lynch and its affiliates, as set out more fully below, has given rise to conflicting claims as to the true ownership of the assets held in the Account. Accordingly, Merrill Lynch, as mere stakeholder of the Account, has brought this action seeking to interplead all persons or entities that may have a claim to the assets in the Account and to settle any and all conflicting claims with respect to the assets in the Account.

21. The current value of the Account is approximately $35,486,569.16.

THE CONFLICTING CLAIMS

22. The board of directors of Arelma, as reflected in the records of the Public Registry Office in Panama, was comprised [of] Michel Amaudruz, Dominique Amaudruz and Charles Griess (deceased) (the "Amaudruz Board").

23. Upon information and belief, defendant Suntrust was until recently the holder of share certificates of Arelma, and in that capacity appears to have had and may continue to have authority and control over Arelma and its assets.

24. Merrill Lynch or its affiliates have received telephone calls and correspondence from defendant John K. Burns and from individuals claiming to act on his behalf, in his alleged capacity as President and Chief Executive Officer of Arelma, requesting a transfer of the assets in the Account to another broker-dealer (the "Requested Transfer"). Such individuals and John K. Burns further advised Merrill Lynch or its affiliates of a purported newly-constituted board of directors of Arelma, comprised of Henry S. Itkin, Mark D. Siljander, and Teresa P. Shearer, as reflected in the records of the Public Registry Office in Panama.

25. Upon information and belief, John K. Burns further asserted that he held powers of attorney granted to him by defendants Imelda R. Marcos and by Ferdinand R. Marcos, Jr., in their individual capacities and as co-executors of the Estate, in relation to Arelma.

26. With respect to the Requested Transfer, purported company representatives of Arelma ad-

vised Merrill Lynch or its affiliates that the Amaudruz Board was not aware of the Requested Transfer, was not in possession of any instructions from authorized parties in respect of the Requested Transfer, and would not endorse same.

27. Upon information and belief, Suntrust denied a purported request by the attorney allegedly acting on behalf of John K. Burns to deliver to said attorney the share certificates of Arelma.

28. John K. Burns's attorney also forwarded to Merrill Lynch's attorneys a copy of a notice of attorney's lien on the proceeds of the Account, asserted in favor of Frontier Risk Capital Management L.L.C., ENC Corporation and Grosvenor Capital Ltd.

29. Upon information and belief, share certificates of Arelma were transferred on January 6, 2000 to the Republic of the Philippines pursuant to a Swiss court order.

30. By letter dated April 28, 2000, John K. Burns's attorney advised Merrill Lynch's attorney that Burns was acting for the Estate and that Burns, in that capacity, was the only person to whom the assets in the Account should be delivered.

31. By letter dated May 8, 2000, alleged representatives of the PCGG forwarded to Merrill Lynch or its affiliates a copy of a purported notarial deed recording an alleged shareholder's meeting of Arelma presided over by representatives of the PCGG, appointing a new board of directors. The said letter further advised that the new board of directors would issue instructions to Merrill Lynch concerning the Account.

32. By letter dated July 12, 2000, the PCGG requested that Merrill Lynch Asset Management

L.P. ("MLAM") effect the transfer of the assets in the Account to an escrow account with the Philippine depository bank.

33. On September 13, 2000, Merrill Lynch or its affiliates received a telephone call from an attorney purporting to represent the PCGG, and reiterating his client's claims to the assets in the Account.

34. By letter dated September 12, 2000, an attorney purporting to represent the Estate of Roger Roxas and the Golden Budha Corporation asserted claims to the assets in the Account, averring that said assets should be used to satisfy judgments obtained by his clients against the Estate and Imelda Marcos.

35. On September 6, 2000, Mariano J. Pimentel, allegedly on behalf of himself and all others similarly situated, filed a complaint in the United States District Court for the District of Hawaii, seeking a declaratory judgment against Merrill Lynch's affiliate MLAM, Arelma, and Imelda R. Marcos and Ferdinand R. Marcos, Jr., as legal representatives of the Estate, claiming that the assets of Arelma are beneficially owned by the Estate and that they are subject to the Judgment, referred to in paragraph 16 of this Complaint, and requesting, inter alia, that MLAM deposit all of the assets of Arelma allegedly in its custody with the Clerk of the Court for the United States District Court for the District of Hawaii.

36. A purported representative of the Philippine National Bank has asserted claims on behalf of the Philippine National Bank to the assets in the Account, averring as the basis of said claim that it was authorized to hold in escrow, at the Philippine National Bank, the assets in the Account.

37. For the foregoing reasons, Merrill Lynch is subject to conflicting claims to the assets held in the Account and has good reason to believe that it may be subject to additional conflicting claims from one or more unknown claimants, and that it is or may be exposed to multiple liability.

CLAIM FOR RELIEF

38. Merrill Lynch repeats and realleges each and every allegation set forth in paragraphs 1 through 37 as if set forth fully herein.

39. As a consequence of the foregoing, Merrill Lynch is subject to the conflicting claims of defendants, and may be subject to additional conflicting claims by unknown claimants, regarding the assets in the Account.

WHEREFORE, Merrill Lynch prays for the following relief:

A. that Merrill Lynch be permitted to deposit into the Registry of this Court the assets in the Account, that the Court enter an order granting a preliminary injunction under 28 U.S.C. § 2361 restraining defendants and any unknown claimants from prosecuting or maintaining any action against Merrill Lynch or its affiliates with respect to the Account, and that the Court enter an Order requiring defendants to interplead and establish their respective claims to such assets;

B. that Merrill Lynch and its affiliates be relieved and discharged from any further liability on any claim, now or hereafter made, with respect to the Account or the assets therein;

C. that each of the defendants, and any other prospective claimants to the assets in the Account, be enjoined from instituting any action against Merrill

Lynch or its affiliates with respect to the Account or the assets therein;

D. that Merrill Lynch be awarded its reasonable costs and attorneys' fees against defendants, jointly and severally; and

E. for such other and further relief as the Court may deem just and proper.

Dated: New York, New York, May 31, 2001

SIDLEY AUSTIN BROWN & WOOD LLP

By: s/ A. Robert Pietrzak
A. Robert Pietrzak

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

No. CV 00-00595 MLR

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., *ET AL.*,

Defendants.

ORDER FOR DISCHARGE OF PLAINTIFF MERRILL LYNCH, PIERCE, FENNER, & SMITH, INC.

Having considered the motion by Plaintiff and Stakeholder, Merrill Lynch, Pierce, Fenner & Smith filed pursuant to Federal Rule of Civil Procedure 22 and Title 28 United States Code section 2361, seeking discharge from any other or further liability to any and all claimants to assets that had been held in Merrill Lynch account number 165-07312 in the name of Arelma Incorporated which now are on deposit with and in the custody of this Court and the Court having heard oral argument on said motion, it is ORDERED that:

1. This case is a proper case for interpleader proceeding.

2. The Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1335 and 28 U.S.C. § 1332, and over defendants.

3. This Court has in rem and quasi in rem jurisdiction over the assets.

4. Venue is proper in this Court.

5. Merrill Lynch is a disinterested stakeholder and has deposited all of the property in dispute in this action into the custody of the Court's Registry.

6. Merrill Lynch was faced with adverse claims and properly brought this action.

7. Merrill Lynch is hereby discharged from any present or further liability for interpleading all claimants and depositing the Assets into the Court's Registry.

8. Merrill Lynch, as a stakeholder with no interest in the Assets, is entitled to an award of attorney's fees and other costs and disbursements from the Assets.

9. All claimants are permanently enjoined and restrained from instituting or prosecuting this action or any further suit or proceeding against Merrill Lynch, its parents, subsidiaries, or affiliates, in any State or United States court affecting the assets, including but not limited to the account, or arising out of any action taken by Merrill Lynch in instituting and prosecuting this action.

10. Claimants shall interplead their respective claims to the assets, including but not limited to the account.

11. Merrill Lynch shall itemize the amount of its attorney's fees and other costs and disbursements by affirmation or affidavit.

12. This Court shall retain jurisdiction of this matter beyond al ruling concerning who is entitled to the assets for purposes of enforcing the injuction described herein.

DATED: 7/2/03

s/ Manuel L. Real
MANUEL L. REAL
UNITED STATES
DISTRICT JUDGE

APPENDIX F

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 03-16742, 03-16743

D.C. No. CV-00-00595-MLR
District of Hawaii, Honolulu

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

REPUBLIC OF THE PHILIPPINES; *ET AL.*,

Appellants,

ARELMA, INC.; *ET AL.*,

Defendants-Appellants,

v.

MARIANO PIMENTAL [*sic*]; *ET AL.*,

Defendants-Appellees.

MEMORANDUM*

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the District of Hawaii

Manuel L. Real, District Judge, Presiding

Decided February 20, 2004**

Before: SCHROEDER, Chief Judge, D.W. NELSON and McKEOWN, Circuit Judges.

The Republic of the Philippines ("the Republic"), the Presidential Commission on Good Government ("PCGG"), Arelma, Inc., and the Philippine National Bank appeal the district court's order lifting the stay we imposed *In re Republic of the Philippines*, 309 F.3d 1143 (9th Cir. 2002). We have jurisdiction over these permissive appeals pursuant to 28 U.S.C. § 1292(b). We affirm.

We review for abuse of discretion whether the district court followed the terms of the remand. *See Lindy Pen Co., Inc. v. Bic Pen Corp.*, 982 F.2d 1400, 1404-05 (9th Cir. 1993). "There is an abuse of discretion when a judge's decision is based on an erroneous conclusion of law or when the record contains no evidence on which he rationally could have based that decision." *Id.* at 1405 (quoting *Petition of Hill*, 775 F.2d 1037, 1040 (9th Cir. 1985)). An order issued after remand may deviate from the mandate "if it is not counter to the spirit of the circuit court's decision." *Id.* at 1404.

In *In re Republic of the Philippines, supra*, a prior permissive appeal in this same case, we vacated the district court's order dismissing the Republic and PCGG from this interpleader action originally

---

**This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

brought by Merrill Lynch to resolve conflicting claims to assets of Arelma, Inc., a Panamanian company that former Philippine President Ferdinand E. Marcos created. On appeal, this court concluded that the district court erred in dismissing the Republic and PCGG because they lacked any legal claim to the assets without first addressing their entitlement to sovereign immunity. We therefore remanded "for entry of an order granting the Republic and the PCGG's motion to dismiss on the grounds of sovereign immunity and entry of a stay of further proceedings." In deciding to impose a stay, we observed that "later developments," including resolution of pending forfeiture proceedings in the Philippines or a change in the immunity status of the Republic and PCGG "may render it more equitably feasible for proceedings to go forward in this case."

On remand, the district court ordered the stay lifted without explicitly considering the recently concluded forfeiture proceedings in the Philippine courts or the immunity status of the Republic and PCGG. We need not determine whether this order violated the terms of our mandate because the district court subsequently held a hearing and entered findings of fact regarding the impact of the Philippine litigation and the propriety of going forward in the absence of necessary parties, *i.e.*, the Republic and PCGG.

We conclude that district court ultimately acted within the spirit of this court's mandate and properly exercised its discretion.

AFFIRMED.

APPENDIX G

EXHIBIT 2

SOCIÉTÉ DE BANQUE SUISSE

Schweizerischer Bankverein
Societa di Banca Svizzera
Swiss Bank Corporation

Téléphone (022) 26 62 11
Das 1.10.1972: (022) 20 11 11
Télégrammes Suisbanque
Telex 22235 bage ch

Mr. José Y. CAMPOS
c/o Mr. Freddy Santschi
1604 Hang Chong Building
5 Queen's Road Central

HONG KONG

1211 Genève 11,
September 21, 1972

2, Rue de la Confédération

My dear Joe,

I take pleasure in referring to our telephone conversation when you called me from Guam yesterday.

For good orders' sake, I confirm that I immediately gave instructions to our Panama Office to constitute a Panamian [*sic*] company, the name of which will either be: LAREMA INC. or ARELMA INC. or RELMA INC. I hope I shall be able to give you the definitive name when you call me from Hong Kong next week. This company will have exactly the same

set up as Maler. We shall appoint the directors in Panama according to the laws prevailing in that country. They are selected people, from our organization and our law office. All official documents, status, etc. will be written in the usual and official manner. Dr. Barbey and myself will be appointed attorneys and the new company will be fully owned by Maler, so that all dispositions made out for Maler will apply to the new entity. As soon as the company is constituted – which will require 2-3 weeks – we are to open a direct account in the name of the new company with Merrill Lynch, New York, giving them authority to operate the account, but excluding withdrawals of cash, securities or pledging of the portfolio. This account will work as a trading account and this is the reason why it should be opened with Merrill Lynch direct.

When thinking over this problem, I thought of another solution which I would like to propose: we create this corporation, we keep the account in Geneva and we give a trading authority in favour of Merrill Lynch New York. These people will then be able to trade in this account almost as easily as if the account was opened with them. However, this solution is a little bit more costly because all transactions have to be charged with a Swiss brokerage in addition to the American brokerage. The advantage of this solution is, however, that we are keeping a very good control of what these people are doing.

Anyway, to cut links with the present account already opened with Merrill Lynch under an individual's name I suggest that the amounts in dollars be sent to us under ref. AZUR and I will then utilize them either according to solution 1 or 2.

My dear Joe, it is my duty to tell you what our long experience has been with accounts managed by brokers. The performance has always been dull but in some cases disastrous. These people are making the portfolios turn as a top: the more transactions the more commissions. Practice has shown that after a while the client's interest is vanishing in their mind. Believe me, tell our friend that personally, I have never seen one of these arrangements working properly to the satisfaction of the client. When the client realizes what happens, it is already too late and the damage is done. Excuse me for expressing so frankly my opinion, but I know the brokers very well and I should have to be blamed for not telling my friends what experience has taught me.

In conclusion, we would be ready to constitute a well diversified growth portfolio which I am sure will prove rewarding over the years. Every transactions will be taken care of at our end in the best interest of our friends. I admit my proposal is far from the contemplated arrangement and should it not be suitable, may I suggest solution No 2 keeping in mind that solution No 1, which is what you proposed over the phone, would be quite in order too.

I look forward to hearing from you and please give my very best regards to our friends and to your family.

Sincerely,

s/ [Illegible]

J. L. SUNIER

EXHIBIT 3

ARELMA INC.
C/O SOCIETE DE BANQUE SUISSE
CONFEDERATION 2
1211 GENEVA 11, SWITZERLAND
ATTN: MR. SCHLEGEL

TO: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

BE IT RESOLVED: That this corporation, ARELMA INC., Panama c/o Swiss Bank Corporation, Geneva, Switzerland be, and it hereby is, authorized and empowered to open and maintain an account with MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, and its successors, by merger, consolidation or otherwise, and assigns, hereinafter called the brokers, for the purchase and sale of stocks, bonds or securities, on exchanges of which the brokers are members or otherwise, and that any of the officers hereinafter named be, and he hereby is, authorized to give written or verbal instructions by telephone, or telegraph, or otherwise, to the brokers to buy or sell stocks, bonds, or securities, either for immediate or future delivery and, if he deems proper to secure payment therefor with property of this corporation; and he shall at all times have authority in every way to bind and obligate this corporation for the carrying out of any contract, arrangement or transaction which shall, for or on behalf of this corporation, be entered into or made with or through the brokers; and that the brokers are authorized to receive from this corporation, checks and drafts drawn upon the funds of this corporation by any officer or employee of this corporation, and to apply the same to the credit of this corporation or to

its account with said brokers and the said brokers are authorized to receive from said officer(s) or from any other officer or employee of this corporation, stocks, bonds, or other security for the account of this corporation with said brokers; said brokers are further authorized to accept instructions from any officer herein named as to the delivery of stocks, bonds, or other securities from the account of this corporation and at his direction to cause certificates of stocks, bonds, and other securities held in said account to be transferred to the name of any officer hereinafter named or of this corporation in the discretion of said officer; and delivery to any such officer of such stocks, bonds, or securities, issued as directed by him, shall be deemed delivery to this corporation; and any such officer shall have the fullest authority at all times with reference to any transaction deemed by him to be proper to make or enter into for or on behalf of this corporation with the brokers or others. All confirmations, notices and demands upon this corporation may be delivered by the brokers verbally or in writing, or by telegraph, or by telephone to any such officer and he is authorized to empower any person, or persons, that he deems proper, at any time, or times, to do any and all things that he is hereinbefore authorized to do. That this resolution shall be and remain in full force and effect until written notice of the revocation hereof shall be delivered to the brokers. The officer(s) herein referred to are named as follows, to-wit:

(1) Mr. André Barbey Attorney

(2) Mr. Jean-Louis Sunier Attorney

We, André Barbey and Jean-Louis Sunier, Attorneys of Arelma Inc., Panama hereby certify that the foregoing is a full, true and correct copy of a resolu-

tion duly and regularly passed and adopted by the unanimous vote of the Board of Directors of said company at a meeting thereof duly called and held at the office of said company on the 25th day of September, 1972, at which meeting all directors were present and voting; that said resolution appears in the minutes of said meeting, and that the same has not been rescinded or modified and is now in full force and effect.

I further certify that said corporation is duly organized and existing, and has the power to take the action called for by the foregoing resolution.

s/ [Illegible]

ARELMA INC

SEAL
of the Attorneys, duly appointed, according to Escritura Publica No. 6315, by ...

Attorneys
Signatures and Powers certified
SWISS BANK CORPORATION
Geneva, 27th November 1973

EXHIBIT 9

Dept.: CASH BW Trans. Code: 11

AT THE REQUEST OF {GENEVE } {0-541-040002-00}

C 063533 No. 1063533

We send you attached our check in accordance with instructions dated C.11.17.72

Remarks: XXXXXXXXXXXXXXXXXXXXXXXXXX
B/O ONE OF SWISS BANK CORP.
GENEVA CLIENTS

SWISS BANK CORPORATION, NEW YORK BRANCH,
15 NASSAU STREET, NEW YORK, N.Y., 10005

MEMORANDUM

MAIL TO:

ARELMA INC.
C/O MERRILL LYNCH
ONE LIBERTY PLAZA
165 BROADWAY 49TH FL.
NEW YORK, N.Y.
ATTN: MR. SACCARDI

$ *2.000.000.00

DATE: NOV. 20, 197[2]
VERY TRULY YOURS,
SWISS BANK CORPORATION

DRAWN ON: THE CHASE MANHATTAN BANK
1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y.

s/ [Illegible]

EXHIBIT 23

Merrill Lynch,
Pierce Fenner & Smith Inc.
Pan Am Building
200 Park Avenue
37th Floor
New York, New York 10166-0236
212 916 7600
Telex WUI 6801303 MERLEAP

[LOGO] Merrill Lynch

October 21, 1987
ARELMA Inc.
c/o Suntrust Investment Co. SA
P.O. Box 195
1211 Geneva 25, Switzerland

Dear Sirs:

Please be informed that per your telex, we are issuing a check for $5,000.00 regarding Administrational fees for the ARELMA account.

I must also inform you that Merrill Lynch has been served notice that all assets and funds are to remain within the account and cannot be dispersed with the exception of taxes, fees and conditions maintaining the management of the assets.

The Republic of the Philippines V. Ferdinand E. Marcos, Et Al. United States District Court, etc. has ordered Merrill Lynch restrict the access of this account.

However, the orderly management of account as in the past is allowed.

I am sure you will wish to discuss this with us.

Sincerely,

s/ Paul Wachendorfer

Paul Wachendorfer, Jr.
Vice President
Merrill Lynch International
Private Client Services

EXHIBIT 27

LIMITED POWER OF ATTORNEY

THE UNDERSIGNED, Madame Imelda Romualdez Marcos citizen of the Phillippines [*sic*], (the "Grantor") does hereby grant Specific Power of Attorney to the below identified person:

NAME: Mr. John K. Burns (PASSPORT NO.: 091519208 USA)
ADDRESS Frontier Risk Capital Management LLC
300 South Wacker Drive, Suite 900
Chicago, Illinois 60606

This Limited Power of Attorney gives Mr. John K. Burns: the following exclusive "Rights" in relation to: Arelma S.A. and/or Arelma Inc., the "Company". These Rights include the rights to investigate, make the demand for an audited accounting of the Company's affairs, to hire or dismiss any advisors to the Company, to vote any and all voting shares issued by the Company held in trust and/or in the name of any other party or held in any manner, to negotiate and arrange collection and/or transfer of the full amount of any shares or held in any manner, to negotiate and arrange collection and/or transfer of the full amount of any shares issued by the Company, any assets of the Company in the interest of the Grantor as his best judgment dictates. These Rights pertain, in addition, to any funds securities and/or shares in the Company kept in any and all identified and/or unidentified type of deposit and or securities account held and or controlled by the entities Poncet Turretini Amadruz & Neyrod, Avocats, and/or Suntrust Investment Company S.A. and/or these entities

partners, officers, owners associates and/or the relatives of any of these persons that is or may be proven to belong of the Company itself and/or the Undersigned and to be under the legal control of the Undersigned individually and/or that may be jointly controlled with other parties who have each issued to Mr. Bums the same Power.

Mr. Burns is authorized to retain the law firm of Winston & Strawn of Chicago with offices in Geneva to advise him and he is further empowered to retain other professional advisors in his sole discretion and for his own account unless otherwise agreed. This Full Power of Attorney is extended and is effective as of January 8, 1997 through the 1st of February, 1998. This Power of Attorney may be terminated by mutual agreement of both parties, in writing and delivered by certified mail, receipt requested.

This Power of Attorney further authorizes Mr. Burns to represent the Grantor out of court and before all courts, administrative bodies and boards of arbitration, to enter into agreements regarding jurisdiction and settlements, to receive and deliver securities, payments or any other matter in dispute, to insurance and enforce executions of debts, to represent the Grantors in credit matters and in matters requiring public authentication and also in matters of the recording of real estate transactions.

The holder of this power of Attorney is further authorized to direct that said any party transfer to him and to the Grantor's designee (to be named in the future) an amount equal to or up to 100% of the gross proceeds of any accounts and or voting rights over any shares obtained for the benefit or use of the Grantor.

s/Imelda Romualdez Marcos
IMELDA ROMUALDEZ MARCOS
Individually and Executrix or if applicable
Co-Executrix of the Estate of Ferdinand E. Marcos

Republic of the Philippines, City of Manila

BEFORE ME, a Notary Public for and in this City, this 25th day of July, 1997 personally appeared Imelda Romualdez Marcos with Philippine Passport No. K463008 issued on February 26, 1992 at Manila, known to be the same person who executed this Full Power of Attorney, duly signed by her and her instrumental witnesses and she has acknowledged to me the same is her free and voluntary act and deed.

s/ C.R. Ramos

[ILLEGIBLE STAMP]

EXHIBIT 28

LIMITED POWER OF ATTORNEY

THE UNDERSIGNED, Mr. Ferdinand Romualdez Marcos Jr. citizen of the Phillippines [*sic*], (the "Grantor") does hereby grant Specific Power of Attorney to the below identified person:

NAME: Mr. John K. Burns (PASSPORT NO.: 091519208 USA)
ADDRESS Frontier Risk Capital Management LLC
300 South Wacker Drive, Suite 900
Chicago, Illinois 60606

This Limited Power of Attorney gives Mr. John K. Burns: the following exclusive "Rights" in relation to: Arelma S.A. and/or Arelma Inc., the "Company". These Rights include the rights to investigate, make the demand for an audited accounting of the Company's affairs, to hire or dismiss any advisors to the Company, to vote any and all voting shares issued by the Company held in trust and/or in the name of any other party or held in any manner, to negotiate and arrange collection and/or transfer of the full amount of any shares or held in any manner, to negotiate and arrange collection and/or transfer of the full amount of any shares issued by the Company, any assets of the Company in the interest of the Grantor as his best judgment dictates. These Rights pertain, in addition, to any funds securities and/or shares in the Company kept in any and all identified and/or unidentified type of deposit and or securities account held and or controlled by the entities Poncet Turretini Amadruz & Neyrod, Avocats, and/or Suntrust Investment Company S.A. and/or these entities

partners, officers, owners associates and/or the relatives of any of these persons that is or may he proven to belong of the Company itself and/or the undersigned and to be under the legal control of the Undersigned individually and/or that may be jointly controlled with other parties who have each issued to Mr. Bums the same Power.

Mr. Burns is authorized to retain the law firm of Winston & Strawn of Chicago with offices in Geneva to advise him and he is further empowered to retain other professional advisors in his sole discretion and for his own account unless otherwise agreed. This Full Power of Attorney is extended and is effective as of January 8, 1997 through the 1st of February, 1998. This Power of Attorney may be terminated by mutual agreement of both parties, in writing and delivered by certified mail, receipt requested.

This Power of Attorney further authorizes Mr. Burns to represent the Grantor out of court and before all courts, administrative bodies and boards of arbitration, to enter into agreements regarding jurisdiction and settlements, to receive and deliver securities, payments or any other matter in dispute, to insurance and enforce executions of debts, to represent the Grantors in credit matters and in matters requiring public authentication and also in matters of the recording of real estate transactions.

The holder of this power of Attorney is further authorized to direct that said any party transfer to him and to the Grantor's designee (to be named in the future) an amount equal to or up to 100% of the gross proceeds of any accounts and or voting rights over any shares obtained for the benefit or use of the Grantor.

MR. FERDINAND ROMUALDEZ MARCOS JR.
Individually and Executrix or if applicable
Co-Executrix of the Estate of Ferdinand E. Marcos

s/ [Illegible]

Republic of the Philippines, City of Manila

BEFORE ME, a Notary Public for and in this City, this 19th day of August, 1997 personally appeared Ferdinand Romualdez Marcos Jr. with Philippine Passport No. [illegible] issued on 04.22.92 at Manila, known to be the same person who executed this Full Power of Attorney, duly signed by her and her instrumental witnesses and she has acknowledged to me the same is her free and voluntary act and deed.

s/ [Illegible]
ROBERT A.C. SISON
Notary Public
PTR # 0840891 – Makati
04.24.97

EXHIBIT 29

MEMORANDUM
RE: ARELMA, PANAMA
prepared in answer to the letter dated October 27th, 1997 addressed by the District Attorney, Mr. P. Cosandey to Dr. A. Wicki

Please find, attached herewith:

- a listing of the documents relating to Arelma case, in five sections

- a file containing the photostat copies of the documents detailed in the above mentioned listing. The file is divided in five parts, according to the five sections

Hereafter, for your easy guidance, a summary of the history of this relationship.

At the time when I was working for Swiss Bank Corporation, and as a senior officer of the bank, I was called to follow up a new relationship, established in september 1972 with the late Mr. Ferdinand Marcos.

We were requested, in fact, by Mr. Joe Campos, who was a very close friend to Mr. Ferdinand Marcos, to set up a Panama Company in whose name an account will be opened with Merrill Lynch Asset Management, New-York and simultaneously, a very small account with Swiss Bank Corp Geneva for the payment of the yearly fees of the company.

We did carry on the instructions (please refer to section three of the list of contents) and a company

called ARELMA INC. was incorporated with the assistance of Swiss Bank Corp Panama.

The account was opened with Merrill Lynch Asset Management, New-York and a limited power of attorney was granted to them to manage the account within certain guidelines (please refer to section two to see the details of the account opening documentation)

The section one contains all the details relating to the incorporation of Arelma and the composition of its Board of Directors. You will notice that myself and Mr. Andre Barbey (of Swiss Bank Corporation) were granted a general statutory power of attorney by the Board of Arelma in 1972. Later on, we were elected as members of the Board, myself being President and Mr. Barbey, secretary.

In 1981, upon a board meeting chaired by myself, the decision was taken to issue 2 certificates, each of 50 shares, which were signed by me according to a resolution taken by the Board.

Both Mr. Barbey and myself resigned from the board of Arelma in november 1982, at the request of Swiss Bank Corp.

A new board was elected, composed of

- Mr. Michel Amaudruz, President
- Mr. Charles Griess, treasurer
- Mrs. Dominique Amaudruz, vice-president and secretary

This board is still the same, actually, except that Mr. Charles Griess passed away and was not replaced.

In 1983, I left the bank to create SUNTRUST INVESTMENT CO.

Although I was no more on the Board of Arelma, I kept the two certificates of shares in my safe, with the agreement of Mr. Joe Campos and of the Bank (Swiss Bank Corp.) as I was the only person who was in contact with the family Marcos, through Mr. Campos

Then, happened the events of which you are aware, i.e. the blocking of the assets of the Marcos family in Switzerland and apparently, in the U.S.A. as mentioned in the letter dated 21st october 1987 addressed to Arelma c/o Suntrust Investment Co., by Merrill Lynch Asset Management (please refer to section 4 of the file)

Considering that:

1) the Board of Directors of Arelma is composed of:

Mr. Michel Amaudruz, lawyer, domiciled in Geneva, as President of Arelma

Mrs. Dominique Arnaudruz, lawyer, domiciled in Geneva, as Secretary and vice-president

N.B.: Mr. Michel Amaudruz is, at the same time, President of the board of Suntrust Investment Co.

2) the Certificates of all the issued shares of Arelma were in my hands

3) the assets of Arelma were blocked, by order of justice, in Switzerland as well as in the States (as it appears out of the letter of Merrill Lynch to Arelma, c/o Suntrust, dated 21st october 1987),

I did not have to worry about possible withdrawals as long as I had no evidence of any release of the

freezing of the accounts held with Merrill Lynch Asset Management

Few months ago, a certain Mrs. Edmunds, pretending to act on behalf and for the account of Mrs. Imelda. Marcos (considered as being "The effective economic beneficial owner" according to Mrs. Edmunds) conveyed to us a public deed showing:

- that an extraordinary shareholders meeting (!!!) of Arelma was held in the State of Maryland, in the USA, on the 12th of march 1997;

- that all the shares (!!!) were present or represented at that meeting (we do not know on which basis such an assessment was made and accepted by official authorities in Panama, while the shares did never leave our safe in Geneva);

- that a new board was elected (please refer to document 1.16 of section 1)

Another few months after that, we received a fax from Merrill Lynch, dated July 13th, 1997, which content is self explanatory (please refer to document no.2.3, under section 2 of the file). We responded to Merrill Lynch message by our fax of July 15th, 1997, informing them that the actual Board of Arelma was in total ignorance of the "tranfer request" and warning them that said actual board will not endorse any responsibility in case of execution of unauthorized instructions (please refer to documents no.2.4 and 2.5 under section 2 of the file)

After the above mentioned attempts, I was subject to an uninterrupted flow of harassments, originating mainly from Mr. John K. Burns (whose correspondence has already been transmitted to yourgoodself through our lawyer Mr. Wicki).

In addition to the last correspondence of Mr. Burns, may I kindly draw your attention to the document no.1.17, under section one of the file, which is a telefax message of Merrill Lynch, dated september 5th, 1997, addressed to Mr. Michel Amaudruz, C/O Suntrust Investment Company. You will kindly notice that reference is made to the alledged shareholders meeting of March 12th, 1997 (document no.1.16) and subsequent meeting of June 12th, 1997 (no public deed received)

I could imagine that public deeds containing resolutions taken on the basis of a false assessment (i.e. presence of all the shares) would very certainly attract serious questions marks vis-à-vis the authors of such assessments (!!!).

Based on all the above mentioned recent events and on the fact that I received no confirmation of release of the freezed accounts from US Courts and that Mr. Bruno Bonvin, of Swiss Bank Corp Geneva had confirmed the ever existing freezing of the small account with them, and taking, into consideration the numerous queries (by phone, fax and letters) of Merrill Lynch with regard to the execution of the instructions relating to transfer of funds, I wondered whether the assets, held with them were still blocked, according to the terms of their letter of 21st october 1987.

I had the clear impression that I could not any more rely on the blocking operated by Merrill Lynch,

Under the above mentioned new circumstances, I did not have any other choice than to put the shares of Arelma at the disposal of the Judicial Swiss authorities.

Geneva, November 3rd, 1997
J. L. Sunier

EXHIBIT 35

DATE STAMP: Feb. 3, 1995

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MDL No. 840

C.A. No. 86-0390

IN RE:
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION

CELSA HILAO, *ET AL.*,

Plaintiffs,

v.

ESTATE OF FERDINAND E. MARCOS

Defendant.

FINAL JUDGMENT

This action came on for trial before the Court and a jury, the Honorable Manuel L. Real, presiding, and the issues having been tried, and the jury having rendered its verdict on liability and damages,

The Court enters final judgment pursuant to FRCP 58 in favor of 135 randomly selected Class Claims and the Plaintiff Class in accordance the with

the unanimous verdicts of the jury on September 24, 1992, February 23, 1994 and January 18, 1995 and the Court's Judgment on Liability as follows.

1. The Court incorporates herein its Judgment on Liability entered October 20, 1992 and its Order entered December 17, 1992 denying defendant's posttrial motions re liability.

2. Judgment for compensatory damages is entered for the below named randomly selected class claims as follows:

Torture Subclass

Claim No.	Victim Name	Amount
PT-4759,	Vitug, Dante B.	$75,000
PT-2143,	Perlas, Eztanislao P.	$30,000
PT-3415,	Bognot, Servillano G.	$35,000
PT-3996	Vega, Angelo	$30,000
PT-1643,	Palma, Ariel Revilla	$50,000
HT-49,	Carina, Bartolome	$50,000
PT-4758,	Valdez, Fortunato	$30,000
PT-2915,	Baay, Edmund	$20,000
PT-555,	Gudayan, Arte	$30,000
PT-535,	Butac Roy	$30,000
PT-3794	Payacag, Candido B., Sr.	$50,000
PT-2473,	Pineda, Bernardo	$100,000
PT-1897,	Lamangan, Joel C.	$100,000
PT-4603,	Sumabat, Maximiano, Jr.	$75,000
PT-415,	Gardon, Antonio S.	$30,000

PT-3770,	Ubod, Policarpio	$30,000
PT-5007,	De Ramos, Mariano B.	$20,000
PT-5129,	Tayag, Jean C.,	$100,000
PT-3624,	Diamante, Crisostomo D.	$20,000
PT-5057,	Anober, Nemesio, Sr.	$30,000
PT-3599,	Flores, Jorge Estioca,	$75,000
PT-2727,	Cerenado, Fidel D.,	$50,000
PT-4970,	Rafales, Porferio O.	$50,000
PT-3108,	Ador, Julio	$50,000
PT-3035,	Calizo, Josue S.	$50,000
PT-2279,	Miraflor, Antonio	$50,000
PT-006,	Gipalaga, Iniego	$75,000
PT-3153,	Delmonte, Gemma B.	$20,000
PT-3715,	Cordero, Leopoldo	$50,000
PT-3267,	Paredes, Efraim.	$50,000
PT-1052,	Depalco, Joey	$30,000
PT-3716,	Carlos, Winnie	$10,000
PT-1318,	Margate, Balbino C.	$30,000
PT 1688,	Cordero, Roberto	$20,000
PT-4450,	Mercader, Jerry A.	$65,000
PT-3407,	Banares, Ely L.	$30,000
PT-3490,	Segui, Josepito C.	$50,000
PT-4022,	Bitancor, Romeo R.	$100,000
PT-2185,	Regio, Bernardo R.	$30,000
PT-4698,	Edralin-Tiglao, Raquel	$50,000

PT-1868,	Roque, Fiolino	$75,000
PT-2593,	Sambajon, Domingo	$30,000
PT-3049,	Dolosa, Ramon	$30,000
PT-2344,	Baez, Marcelino	$30,000
PT-1645,	Pution, Roberto	$75,000
PT-3362,	Nacario, Melchor F.	$30,000
PT-1175,	Fajardo, Wilfredo F.	$50,000
PT-3080,	Ramirez, Juanito C.	$25,000
PT-1205,	Masangkay, Mariana R.	$75,000
PT-2094,	Camuta, Jose,	$30,000
PT-2598,	Villanueva, Benigno	$20,000
PT-252,	De los Angeles, Alexander	$100,000
PT 344,	Demelino, Matilde A.	$20,000
PT-3687,	Salvana, Estrella	$30,000
PT-4440,	Kasim, Abdul	$65,000
PT-3894,	Dionsay, Antonio	$75,000
PT-2317,	Umpad, Romeo B.	$30,000
PT-3531,	Cowak Fredie	$30,000
PT 2584,	Pabilani, Jose	$50,000
PT 757,	Aspirin, Ceriaco	$100,000
PT-3873,	Bolastig, Junnie T.	$75,000
PT-3658,	Madendog, Pilot	$100,000
PS-3031,	Usman, Motalib	$40,000
PT-518,	Rebullido, Felixburt	$50,000
PT-4985,	Deri, Raul G.	$85,000

PT-5093,	Kiram, Linding	$30,000
PT-4516,	Sela, Eling	$30,000

Summary Execution Subclass

Claim No.	Victim Name	Amount
PS-2036,	Alcantara, Bartolome	$130,000
PS-460,	Hara, Juliana Isipin	$93,667
PS-1125,	Aggabao, Orlando	$135,000
PD-118,	Manog, Uldarico C.	$134,533
HS-17,	Figuerres, Alfonso C	$128,533
PS-2416,	Mijares, Luis Manuel	$140,000
PS-3339,	Salasol, Saliguidan	$ 95,833
PS-292,	Ganacias, Alberto	$148,000
PS-209,	Bucag, Renato	$175,000
PS-684,	Cabayao, Salvador J.	$ 79,042
PS-1629,	Gumarang, Agrifino, Jr.	$ 81,667
PT-2855,	Jimenez, Samuel	$103,667
PS-194,	Falsis, Melchor	$ 78,555
PT-5049.	Belleza, Alberto	$ 90,000
P5-695,	Davantes, Reginaldo F	$105,000
PS-1048,	Llabres, Antonio	$ 85,000
PS-1218,	Ceron, Juan Z.	$101,700
PS-2220,	Mokamad, Magsaysay H	$ 85,000
PS-1852,	Dimatingkal, Tayong	$ 90,000
PS-2996,	Kadatuan, Ibrahim	$150,000

PS-2230,	Saban, Kubaid	$ 90,000
PS-276,	Kindao, Kamilan	$110,000
PS-2503,	Mamalinta, Hadji Samad	$ 95,000
PS-2943,	Kamad, Samama	$130,000
P5-3153,	Faks, Samad	$125,000
PS-2005,	Gamha, Alamanso	$ 90,250
PS-3053,	Orangotan, Saaban	$125,000
PS-3294,	Bada, Kanakan	$150,000
PS-2164,	Dapak, Musa	$115,278
PS-1966,	Nacua, Alejandro	$110,000
PS-617,	Orcullo, Alexander L.	$160,000
PS-1128,	Baloro, Bonifacio	$100,000
PS-425,	Baloro, Lucia	$100,000
PS-2794,	Abudllah, Abas	$125,000
PS-2278,	Anti, Kandog.	$145,000
PS-2027,	Kasim, Dakungan	$150,000
PS-278,	Malicay, Manolo	$126,111
PS-2869,	Magit, Tammo	$ 75,000
PS-2509,	Mama, Kabalukan	$125,000
PS-3248,	Panalay, Aminola	$125,000
PS-3311,	Parasan, Salaban	$175,000
PS-2369,	Talib, Asim	$180,000
PS-3074,	Tunggal, Toto	$185,000
PS-1720,	Alipoplo, Paglas	$119,444
PS-1008,	Albaira, Demetrio	$ 90,000

PS-066,	Regalado, Marife	$ 93,611
PS-2366,	Taha, Macmod	$162,000
PS-692,	Casia, Saturnino	$130,000
PS-331,	Giente, Enrique Alegando	$140,000
PS-2088,	Hamoy, Socrates G.	$111,250
PS-1716,	Acaso, Crisanto, Jr.	$ 81,944

Disappearance Subclass

Claim No.	Victim Name	Amount
PT-1772,	Wyco, Lucilo	$119,250
PD-552,	Kamsa, Sulaiman	$108,005
PD-349,	De la Cruz Nazareno, Ernesto	$57,600
PD-501,	Buenaventura, Jonny	$67,083
PS-2970,	Omar, Abdullah	$103,583
PD-770,	Maranao, Kutu	$55,000
PD-556,	Madi, Maguid	$125,000
PS-3075,	Kuda, Minundas	$90,903
PD-053,	Albiso, Miguel	$110,000
PD-385,	Bodiongan, Urbano G.	$87,500
PD-426,	Andayao, Bodo	$65,000
PD-663,	Dalgan, Maglib	$87,222
PD-903,	Pena, Batokan	$115,000
PD-684,	Dumpao, Usman	$50,000
PD-995,	Guardo, Decoroso C.	$105,000
PD-723,	Esmael, Ulting	$80,000

PD-740,	Abdulgani, Singapol	$110,000

3. Judgment for compensatory damages is entered for the remaining members of the Plaintiff Class as follows:

a. for the remaining Plaintiff Subclass of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 were tortured while in the custody of the Philippine military or para-military groups in the aggregate of $251,819,811.00 to be divided pro rata.

b. for the remaining Plaintiff Subclass of all current citizens of the Republic of the Philippines their heirs and beneficiaries, who between September 1972 and February 1986 were summarily executed while in the custody of the Philippine military or Para-military groups in the aggregate of $409,191,760.00 to be divided pro rata.

c. for the remaining Plaintiff Subclass of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 disappeared (and are presumed dead) while in the custody of the Philippine military or para-military groups in the aggregate of $94,910,640.00 to be divided pro rata.

4. Judgment for exemplary damages, to make an example for the public good, is entered in the aggregate of $1,197,227,417.90 to be divided pro rata among all members of the Plaintiff Class.

[PARAGRAPH 5 STRUCK OUT]

6. Pursuant to FRCP 54(d) (2) (B), the Court orders that Class Plaintiffs (and their attorneys') claim for counsel fees and their submission in support thereof be deferred and postponed until further order of the Court.

7. Pursuant to FRCP 54(d)(1), Class Plaintiffs are awarded costs previously taxed by the Clerk together with such costs incurred since then as the Clerk may tax.

8. Plaintiffs' Motion to Amend the Pleadings is granted, and Count 2 of the Consolidated Amended Complaint is deemed amended to state a claim for relief for a permanent injunction.

9. Plaintiffs' Motion for Entry of a permanent Injunction is granted.

a. The Court finds, based upon all evidence submitted in this litigation:

(1) Plaintiffs have succeeded on the merits of this litigation and the judgment herein exceeds the assets of the defendant Estate both the amount admitted by the defendant and the amount proved by Plaintiffs.

(2) Beginning as early as 1968, Ferdinand E. Marcos and Imelda R. Marcos established secret bank accounts under alias names and the use of Liechtenstein foundations in various countries with banking secrecy laws, including Switzerland.

(3) Ferdinand and Imelda Marcos engaged in a sophisticated pattern and practice of secreting their assets, periodically laundering those assets in various countries, and redepositing the monies in Swiss bank accounts in the names of multiple Liechtenstein foundations.

(4) Federal courts have twice enjoined the transfer of Marcos assets finding a pattern and practice of secreting their assets, and the courts of appeals have thrice affirmed the injunctions. See Hilao v. Estate of Ferdinand Marcos, 25 F.3d 1467 (9th Cir. 1994), cert. denied ___ U.S. ___ (1/23/95); Republic of the Philippines v. Marcos, 862 F.2d 1355 (9th Cir. 1988); Republic of the Philippines v. Marcos, 806 F.2d 344 (2nd Cir. 1986).

(5) Imelda Marcos and Ferdinand R. Marcos, the legal representatives of the Estate, have never opened a probate proceeding, and opposed the opening of involuntary probate proceedings in the United States and the Philippines.

(6) This Court previously found the deposition testimony of Imelda Marcos evasive as regards the amount and location of Estate assets.

(7) There is a probability that the Estate has assets other than the foreign bank accounts identified by the Estate's legal representatives.

(8) Imelda Marcos refused to consent disclosure of documents in the possession of Swiss banks.

(9) Imelda Marcos collaterally attacked in Switzerland this Court's letters rogatory addressed to Swiss authorities requesting documents from Swiss banks.

(10) Credit Suisse and Swiss Bank Corporation were served with subpoenas in New York as ordered by this Court, but failed to produce any documents regarding Estate accounts in Switzerland.

(11) Imelda Marcos has vigorously defended this litigation and paid millions of dollars in legal fees.

(12) After Issuance of the Preliminary Injunction in this litigation, Imelda Marcos and Ferdinand R. Marcos, on behalf of the Estate, entered into two agreements with the Republic of the Philippines in June 1992 to transfer and split all the assets of the Estate.

(13) The Republic of the Philippines has no judgment against the Estate, but has possession of millions of dollars of assets owned by or in which the Estate has an interest.

(14) Because the Plaintiffs' judgment exceeds the assets of the Estate, the heirs and beneficiaries of the Estate have no expectation of receiving any monies therefrom.

(15) Credit Suisse and Swiss Bank Corporation continue to hold several hundred million dollars in accounts owned by or in which the Estate has an interest.

(16) The Republic of the Philippines is in privity of contract and acting in concert with the Estate to transfer and split the assets of the Estate.

(17) Credit Suisse and Swiss Bank Corporation are agents and representatives of the Estate.

(18) The Republic of the Philippines is an agent, representative, aider or abettor of the Estate.

(19) The defendant Estate, its legal representatives, Credit Suisse, Swiss Bank Corporation and the Republic of the Philippines received no-

tice of the hearing for permanent injunction and had an opportunity to participate and present evidence.

(20) There is a substantial likelihood that the Marcoses' pattern and practice of transferring and secreting assets will continue and prevent the satisfaction of the judgment herein unless a permanent injunction is entered.

(21) The Plaintiffs have no adequate remedy at law.

b. The defendant Estate, and its agents, representatives, aiders and abettors are, until satisfaction of the judgment herein, permanently enjoined and restrained from directly or indirectly:

(1) transferring, conveying, encumbering, dissipating, converting, concealing, or otherwise disposing of in any manner any funds, assets, claims or other property or assets owned actually, equitably or beneficially by, or in the possession or custody of or held by or in any way on behalf of or for the benefit of the Estate of Ferdinand E. Marcos; and

(2) destroying, mutilating, concealing, transferring, altering or otherwise disposing of in any manner any books, records, computer programs, computer files, computer printouts, correspondence, memoranda, brochures, or any other documents of any kind, or pertaining in any manner to Ferdinand Marcos, the Estate of Ferdinand Marcos or its representatives, except to their attorneys or in compliance with orders of this Court.

c. Non-parties Credit Suisse, Swiss Bank Corporation and the Republic of the Philippines are identified to this permanent injunction as agents representatives, aiders or abettors of the defendant Estate and subject to its terms.

d. Plaintiffs' counsel may serve this permanent injunction upon legal counsel for the Defendant Estate, it appearing that the estate's legal representatives are currently outside the United States, as follows:

(1) On Imelda R. Marcos by service on her attorney Lex Smith by hand or facsimile; and

(2) On Ferdinand R. Marcos by service on his attorneys John Bartko by certified mail or facsimile.

10. Any monies collected by settlement or execution on judgments entered in any of the MDL 840 cases against the defendant Estate shall be held and disbursed as directed by the Court.

11. Pursuant to FRCP 23, the Court retains continuing jurisdiction over the Motion for Contempt, the Permanent Injunction, settlement, the distribution of any monies collected by settlement or execution, the determination of counsel fees, and any other matters as may properly come before the Court.

Dated: 1/27/95

s/ Manuel L. Real
MANUEL L. REAL
MDL 840 Transferee Judge

EXHIBIT 44

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. CV00-00595 MLR

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., A/K/A ARELMA S.A., *ET AL.*,

Defendants.

DEFENDANT SUNTRUST INVESTMENT COMPANY'S RESPONSE REQUESTED FOR ADMISSION FROM THE DEFENDANTS ESTATE OF ROGER ROXAS AND THE GOLDEN BUDHA CORPORATION

Defendant SUNTRUST INVESTMENT CO., S.A. ("Suntrust") by and through its undersigned counsel and pursuant to Rule 36, Federal Rules of Civil Procedure, Response Requested for Admission served upon it by Defendants Estate of Roger Roxas and The Golden Budha Corporation as follows:

* * *

Request for Admissions No. 6: That Arelma, Inc. was incorporated for the purpose of hiding assets owned by Ferdinand Marcos.

Response: To Suntrust's knowledge, the purpose of the incorporation of Arelma, Inc. was to receive funds owned by Ferdinand Marcos. Suntrust does not know whether these assets were supposed to be hidden, and if so, from whom.

Request for Admissions No. 7: That Arelma, Inc. was controlled by Ferdinand Marcos or his representatives during his lifetime.

Response: Admitted.

* * *

EXHIBIT 47

[A]

DECISION OF THE SWISS FEDERAL COURT (BUNDESGERICHT)

1A.91/1997/odi

In the First Public Law Division [of this Court],
Dec 19, 1997:

Judicial Panel comprised of: Judge Aemisegger, presiding judge of the First Public Law Division; and

Judges Feraud and Jacot-Guillarmod

Clerk of Court: [Ms.] Gerber.

In the matter of:

The Swiss Federal Office of Police Matters ("BAP"), Bureau of International Intergovernmental Cooperation, Division of Appeals;

-- said party being the Appellant.

v.

(1) Fondation M a l e r, address Postfach 183, FL-9490 Vaduz;

(2) A r e l m a Inc., Panama City, Panama;

said parties (1) and (2) being the lead Appellees, and being represented by attorney Peter J. Marz, Bellerivestrasse 201, Zurich;

(3) Bezirksanwaltschaft IV of the canton of Zurich

[(the district public prosecutor's office for district IV of said Swiss canton)], Bureau 1 thereof;

(4) Staatsanwaltschaft of the canton of Zurich

[(office of the chief public prosecutor of the canton of Zurich)],

represented by Chief Cantonal Public Prosecutor Dr. Müller;

(5) Superior Court of the Canton of Zurich (Obergericht), Third Panel for Criminal Law Matters thereof; and

(6) Republic of the P h i l i p p i n e s;

represented by attorney Dr. Martin Kurer, of Walder Wyss & Partner, address Münstergasse 2 (Postfach 4081), Zurich.

Re: Letters Rogatory with the Republic of the Philippines as the requesting State, B 65471/29.

[Translator's note: In view of the breadth of the Letters Rogatory here, "Rechtshilfe" will be hereinafter translated as "request for intergovernmental cooperation".]

History:

A.

In April 1986, the Republic of the Philippines made a formal request for cooperation [(possibly in the form of Letters Rogatory)] to the Swiss Federal Office of Police Matters ("BAP"), in connection with its (ROP's) effort to recover assets which Ferdinand Marcos, his relatives, and his close associates allegedly had unlawfully appropriated in the exercise of

their public functions. Based on this formal request, in the Swiss cantons of Zurich, Freiburg (Fribourg), and Geneva, inter alia, assets of various trusts, foundations, and companies were frozen -- by the [bank] Sweizerischer Bankverein (SBV) in Geneva and Freiburg, and by the [bank] Sweizerischer Kreditanstalt (SKA) in Zurich, and it was agreed to divulge account information to [the government of] the Philippines (for details, see Swiss Federal Court Reporter BGE 116 Ib 452, pp. 454 ff.).

[Translator's note: In this translation the terms "frozen", "freeze", "sequestered", and "sequester have been selected, over other terms such as "detained", "blocked", etc.; except that a decision to detain assets which have been previously ordered to be transferred is referred to as a "detention" decision.]

There were appeal decisions (Rechtsmittelentscheide) concerning certain directives and orders issued by the Freiburg Investigating Judge and the Office of the District Public Prosecutor of Zurich, which appeal decisions were appealed to the Federal Court (Bundesgericht) [(viz. another panel of this Court)] by the heirs of Ferdinand Marcos (deceased Sep 28, 1989) and further by Imelda Marcos, Aguamina Corporation, and the trusts "Palmy", "Avertina", and "Vibur". On Dec 21, 1990, the Federal Court issued two decisions simultaneously. The Federal Court ordered the transfer of the bank information collected from SBV in Freiburg and from SKA in Zurich, under the condition that the requesting State first submit an express and unambiguous statement binding itself to grant to the accused the minimal rights and guarantees which are provided under the Swiss Federal Constitution (BV) and the European Convention on Human Rights (EMRK),

and to heed the "principle of special circumstances" enunciated in Art. 67 of the Swiss Federal Statute Concerning International Intergovernmental Cooperation in Criminal Cases of Mar 20, 1981 ("IRSG"; SR 351.1). The Federal Court also ordered [lit., "permitted"], in essence, that all of the property which had been frozen at SBV Freiburg and SKA Zurich be transferred [to the requesting State], but with a stay of execution [on the final disposition of the property] until a final and dispositive decision is issued by the Sandigbayan [(evidently Philippine supreme court for criminal matters)] or another lawfully competent Philippine court in [such] criminal matters, which decision provides either for restoral of the funds to the rightful holders thereof or for forfeiture of the funds (BGE 116 Ib 452, Opinion Item 5, pp. 459 ff.). In this connection, the following was provided (German-language version of the Judgment):

> "If the requesting State is to institute a procedure toward this end, it must do so within one year from the issuance of the present Decision of the Federal Court, and if it fails to meet this deadline then the assets shall be unfrozen at the request of the interested parties [therein]. Moreover, any such procedure must satisfy the requirements of Art. 4 of the Swiss Federal Constitution (BV), Art. 58 of BV, and Art. 6 of the European Convention on Human Rights (EMRK)."
>
> "A further condition [which this Court imposes] is that, prior to execution of any decision concerning restoral of the money to its rightful holders or concerning forfeiture of the money, the authorities of the requesting State must issue a statement which states

clearly whether the present Decision has been implemented via an appropriate proceeding which meets the abovestated formal requirements, and whether the content of such decision, is not 'contrary to Swiss public order' [i.e. offensive to Swiss law]."

The Geneva Investigating Judge adjusted the orders he had issued re the intergovernmental cooperation, so that such orders would be compatible with the [aforesaid] Decision of the Federal Court of Dec 21, 1990.

History. B.

In an Order dated May 23, 1991, the Federal Office of Police Matters (BAP) designated the canton of Zurich as the "lead canton" pursuant to the Statute on Intergovernmental Cooperation (IRSG), and as the canton responsible for [implementing etc.] the decisions which may occur [(in any court etc.)] subsequently to the Decision of the Federal Court of Dec 21, 1990 (see BGE 119 Ib, pp. 56 ff.) in the matter of the request for intergovernmental cooperation in re Marcos. In an Order dated Feb 06, 1992, the District Public Prosecutor's Office of Zurich made the determination that in the meantime six criminal complaints had been filed (against Imelda Marcos-Romualdez) in the Sandiganbayan court, and that these qualified as proceedings which (as discussed above) were required to be filed in a competent court within the prescribed one year period, which proceedings are such as putatively will lead to an adjudication of the rights of the accused and which putatively will afford the accused an opportunity to participate in the process in an unconstrained manner. This Order was not opposed or appealed.

History. C.

On Aug 10, 1995 the Republic of the Philippines filed an "Additional Request for Intergovernmental Cooperation" (aka Mutual Assistance) via the Presidential Commission on Good Government [(a Philippine agency)] (PCGG). A petition was filed requesting that the assets which had been frozen in Switzerland be preliminarily transferred to an escrow account of the Philippines National Bank (PNB), prior to the obtaining of a final and dispositive decision in the Philippines.

The District Public Prosecutor of Zurich responded favorably to that Request, and in three separate Orders dated Aug 21, 1995, ordered [the custodian banks] to preliminarily transfer the property to which Imelda Marcos and the heirs of Ferdinand Marcos had formal or economic claims, to the requesting State. The banks involved, viz. SBV in Geneva and in Freiburg, and SKA in Zurich, were served notice [of said Orders], and the assets were transferred in the context of the [prescribed] obligations of the Republic of the Philippines and PNB, pursuant to an "Escrow Agreement" of Aug 14, 1995.

History. D.

Fondation Maler, Arelma Inc., other owners of the subject accounts, the banks, the estate of [Ferdinand] Marcos, Imelda Marcos-Romualdez, and the following two holders of prejudgment writs of attachment:

-- Golden Budha Corporation [sic]; and

-- the firm Anderson, Hibey & Blair;

filed appeals against the Orders of the District Public Prosecutor's Office dated Aug 21, 1995. On Feb 20, 1997 the

Superior Court [of the canton of Zurich] issued 9 decisions. The appeals of the banks were dismissed for lack of evidence of authority to sue. Nonetheless the three Orders of the District Public Prosecutor of Aug 21, 1995 were overruled, on the basis of the appeals of the other appellants. The Superior Court ruled that the conditions prescribed in the Decisions of the Federal Court of Dec 21, 1990, viz. the conditions precedent to a transfer, ought to have been complied with and ought to continue to be complied with.

History. E.

The 6 decisions of the Superior Court favoring the appeals [against the aforesaid Orders] were appealed by the BAP to the Federal Court, as an administrative law appeal. The BAP requested that the decisions be reversed, and further that the condition requiring a final and dispositive decision of the Philippine court before the subject property could be transferred, which condition was set forth in the Decision of the Federal Court of Dec 21, 1990, be eliminated. Therewith the BAP sought to have the subject property which had been frozen in Switzerland be immediately executed upon [i.e. be transferred to the Philippine government], with the exception of a certain portion thereof to be determined [then or shortly thereafter] by the Federal Court.

The just-described administrative law appeal is the present appeal, seeking to overturn the appeal decision [of the Superior Court of the canton of Zurich]. That decision below was based on the appeal

petition below of Fondation Maler and Arelma Inc. Those appellants (here Appellees) request that the appeal [of the BAP] be denied, and request further relief as follows:

> "2. In the alternative (absent complete vacation): The preliminary transfer of the property of the Appellant to the Republic of the Philippines shall be permitted only after compliance with all of the following preconditions:
>
> -- "That the Republic of the Philippines fully guarantees [(against expropriation)] all of the claims for restoral which have been asserted by the Appellant, ensuring full restoral [(in the event Appellant eventually prevails)] or at least full monetary compensation for the value of said property;
>
> -- "That this guarantee be implemented prior to the transfer of the assets, namely that the guarantee be in the form of a guarantee of a Swiss bank or by escrow deposit of [suitable] securities;
>
> -- "That the Republic of the Philippines is obligated not to have control over the transferred property unless and until a final, dispositive, and enforceable decision (judgment) has been issued by the Sandiganbayan or another lawfully competent Philippine court in the related criminal cases, wherewith the procedure underlying such decision shall satisfy the requirements of Arts. 4 and 58 of BV, and Art. 6 of EMRK, and the Swiss enforcing authorities shall have verified this and shall have performed monitoring to determine that

the decision is not 'contrary to Swiss public order', and further all of these facts shall be confirmed in writing by the Republic of the Philippines;

-- "That within 7 years from the issuance of the [present] Decision of the Federal Court, the Republic of the Philippines shall have finalized the procedure in the Philippines whereby the assets are either transferred to the rightful owners or are forfeited, such finalization being in the form of a final, dispositive, and enforceable decision (judgment), and the Republic of the Philippines shall have duly submitted said decision to the Swiss enforcing authorities who are to confirm that the above-described formal requirements have been met; and if these conditions be not met then the transferred property shall be restored to the present Appellees, and/or a declaration shall be issued [by the Republic of the Philippines] that the surety posted shall revert to the present Appellees;

-- "That all of the foregoing conditions shall be communicated to the Republic of the Philippines in a formal diplomatic note, and an appropriate diplomatic receipt shall be obtained from the Republic of the Philippines acknowledging receipt of said note."

"3. In the alternative (absent complete vacation): In any event, any preliminary transfer of assets shall be limited in amount to at most 90% of the total."

The Office of the District Public Prosecutor, the Office of the Chief Cantonal Public Prosecutor, and the [Cantonal] Superior Court all waive further pleading. ("Vernehmlassung"). The Republic of the Philippines itself supports the appeal petition of the Appellant,

Opinion of the Court:

1.

The presently appealed Decision of the [Cantonal] Superior Court of Zurich is a "final decision in the last instance" (decision exhausting available appeals below the present Court), and is adverse to the present Appellant. It relates to the Request for Intergovernmental Cooperation presented by the Philippines, dated Aug 10, 1995, which pursuant to Art. 80f Para. 1 of IRSG is eventually appealable to the Federal Court as an administrative law matter (see especially Opinion Items la and lb of the Federal Court Decision of Dec 10, 1997 in BAP v. Aguamina Corp.). The BAP has standing to bring the present Appeal by virtue of Art. 25 Para. 3 and Art. 80h(a) of IRSG. The other prerequisites to bringing the appeal being also satisfied, the administrative law appeal is accepted for decision.

2.

As discussed in more detail in the Federal Court Decision in BAP v. Aguamina Corp. (Opinion Item 3 thereof), the holding and judgment of the Federal Court Decision of Dec 21, 1990 is not adverse to the new Request for Intergovernmental Cooperation presented by the Philippines. This is applicable in the present case as well, because the decisions of the Geneva Investigating Judge re the Request for Intergovernmental Cooperation concerning the accounts

of Fondation Maler and Arelma Inc. at SBV Geneva have not been judicially reviewed.

3.

Based on the Decision of the Federal Court of Dec 21, 1990, it is res judicata that the property which has been frozen in Zurich and Freiburg is deemed the fruit of ("profit or loss from") criminal activity pursuant to Arts. 74a Paras. 1 and 2(b) of IRSG, and ought to be essentially completely transferred to the Republic of the Philippines for determination as to whether said property shall be returned to its rightful owners or be forfeited. The same threshold situation applies regarding the Orders the Geneva Investigating Judge affecting the accounts of the present Appellees in SBV in Geneva, which orders were not appealed [and therefore became final]. According to Art. 74a Para. 3 of IRSG, a transfer may take place at any stage of the foreign procedure, [but] "as a rule, [it must be] based on a final, dispositive, and enforceable decision [i.e. court decision] of [i.e. in] the requesting State". Nonetheless, pursuant to Art. 74a Para. 4 of IRSG, the property may be detained in Switzerland if for the sake of protection of certain rights of third parties against the injury which might be caused by immediate transfer. If a rightful owner asserts a claim for the property under these circumstances, its release can be delayed until said owner's legal entitlement can be clarified, wherewith if and only if certain preconditions set forth in the statute are satisfied then the property can be transferred to said owner (Art. 74a Para. 5 of IRSG). In the light of this provision, in the present case an inquiry must be undertaken as to whether the preconditions for a preliminary transfer of the frozen property [to the Philippine government] are

satisfied as per Art. 74a Para. 3 of IRSG -- i.e. whether [the Swiss intergovernmental cooperation authorities] may waive the requirement of a final, dispositive, and enforceable decision (judgment) of the requesting State (see Items 4 and 5 of the present opinion, infra). If (and only if) these conditions are satisfied, the further question is interposed as to whether there are any rights of third parties pursuant to Art. 74a Para. 4 of IRSC which require detention of the property [in Switzerland] (see Item 6 of the present opinion, infra). Finally, it must be taken into account that Art. 74a of IRSG is formulated as an enabling provision ("can" provision). Even if all statutory preconditions are satisfied, the Swiss intergovernmental cooperation authorities are not obligated to perform the requested transfer. They have the discretion to decide the matter, although in so doing they are subject to certain requirements (see Item 7 of the present opinion, infra).

4.

Art. 74a Para. 3 of IRSG requires that there be in effect a final, dispositive, and enforceable decision of the requesting State; however it is possible to waive this requirement under certain circumstances. The statute leaves the waiver decision to the authorized governmental authorities. Thus a preliminary transfer remains the exception and not the rule. We will proceed hereinbelow to discuss the applicable legal criteria for deciding between the rule [(sequestration in Switzerland)] and the exceptions (preliminary transfer as requested by the Philippine government)].

(4a) As the Federal Court discussed in detail in the Decision of Dec 10 [, 1997] in BAP v. Aguamina [Corp.] (Opinion Item 4 thereof), the requirement of a final and dispositive decision of [a court of] the requesting State (Art. 74a Para. 3) serves first of all to clarify what the factual and legal situation is: The decision between restoral and forfeiture is a determination as to whether the frozen property was acquired with criminal taint, and further as to who is legally entitled to the property; and the court Decision will include an order as to the disposal of the property (viz. restoral or forfeiture). In the process, the factual situation is resolved and clarified, and a definitive decision is rendered as to the possibility [sic] of forfeiting the property or restoring it [to certain claimants], in accordance with the law of the requesting State. On this basis, as a rule the [Swiss] intergovernmental cooperation authorities can then order the transfer of the frozen property.

(4b) The condition requiring a final and dispositive decision [in the Philippines] also enables [(and requires)] monitoring [by Swiss authorities] to ensure that the restoral of the frozen property to the injured parties (or the forfeiture of said property) occurs on the basis of a judicial procedure which is in accord with the procedural fundamentals set forth in the EMRK and in the International Compact on Civil and Political Rights of Dec 16, 1966 (UNO Compact II; SR 0.103.2), and that the foreign decision is not "contrary to Swiss public order" and does not violate internationally guaranteed human rights. There is no requirement for substantive monitoring, e.g. monitoring to verify whether the foreign decision is well reasoned. It follows that, in the case of a preliminary transfer, assurance must be provided that a

court decision will be arrived at in the requesting State about the fate of the property in a manner (of judicially arriving at such decision) which is compatible with the minimum requirements of EMRK and UNO Compact II.

(4c) Regarding the issue of when an "exceptional case" pursuant to Art. 74a Para. 3 of IRSG may be deemed to occur, this depends on the specific facts. The facts must reveal unusual circumstances, which justify overriding of the condition precedent that a final and dispositive court decision be rendered. The statute itself does not directly indicate which grounds in general might justify such an exception. The cases which came up in this Court's deliberations were examples [(e.g. in legislative history)] in which it was sought to ascertain the intent of the legislature. In this regard, the [Swiss] intergovernmental cooperation authorities have a certain amount of discretion which they may exercise. The statute does impose constraints, however: Any granting of exceptions must not lead to a situation wherein the objectives sought to be achieved by the requirement of a final and dispositive decision are evaded.

(4d) This [(the intense concern for upholding the requirement of a final and dispositive court decision in the requesting State)] is not applicable in a case in which clear circumstances are Present indicating that the property is the fruit of, criminal activity, such that a further proceeding to establish the basis for denying restoral would be all but superfluous. The Federal Court, based on Art. 74a Para. 3 of IRSG, ruled that it was permissible to preliminarily transfer a fine art painting to a requesting State (namely France) requesting intergovernmental coop-

eration. The painting had been stolen from its rightful owner in France and had been subsequently sold in Switzerland. Because there was no question that the painting [in its status in Switzerland] was the fruit of criminal activity as per Art. 74a Para. 2(b) of IRSG, the Swiss Federal Court held that the requirement for a formal decision process in the requesting State, as to restoral or forfeiture, could be waived (BGE 123 II 134, Items 5c and 5d of the court's opinion, pp. 140 ff.; see also BGE 123 II 268, Item 4a of the court's opinion, p. 274). In contrast, there is a fundamental resistance to assertion of an "exception" if there is not clear evidence in hand of the criminal origin of the subject property. It is not the function of the Swiss intergovernmental cooperation authorities to resolve these questions; rather, a judicial proceeding in the requesting State is required prior to the transfer (BGE 123 II 268, Item 4b of the court's opinion, pp. 274 ff.). Where the criminal origin of the property is very evident, the interest of the State which is the object of the request [(here Switzerland)] in the right to subsequently monitor the compliance with elementary due process guarantees in the disposition of the property (here the choice being between restoral to the rightful owners and forfeiture) is limited. This interest may be diminished in importance in particular cases, and may permissibly be overbalanced by other interests, whereby a waiver of the requirement for a prior due process decision for restoral (or forfeiture) is justified. In any event, assurance must be provided that the ultimate decision for restoral of the property to its rightful owners (or forfeiture of the property) will be in a judicial procedure which is in accord with the EMRK and/or with UNO Compact II.

5.

In view of the conceptual framework laid out above, the following appears appropriate for the present case:

(5a) As discussed in the Decision of Dec 10, 1997, it is in the interest of Switzerland to be able to transfer the Marcos funds as requested, as soon as possible. This objective is served by preliminary return [sic -- i.e. to the Philippine government] of the property.

(5b) The unlawful origin of the frozen funds cannot be sincerely doubted based on our current state of knowledge. However, according to the record it is not possible to associate particular items of property [(accounts and the like)] with specific crimes; accordingly it is also possible that lawful funds of the Marcos family also found their way into the trusts. As to the amount of such lawful funds, they may be small in relation to the total amounts frozen -- as the present Appellant has ably argued. For most of the frozen assets, there is sufficient certainty that one may characterize them as fruits of criminal acts. Therefore one cannot a priori exclude preliminary transfer of the property, provided that assurance is provided that the decision as to restoral (or forfeiture) will be generated in a due process proceeding. The resolution of the issues relating to restoral (or forfeiture) of the frozen property must be carried out in the Philippines, which is the situs where the alleged criminal acts were committed.

(5c) Pursuant to Art. 2(a) of IRSG, a request for intergovernmental cooperation shall not be granted if there are grounds to conclude that the

procedure in the foreign country will not satisfy the due process requirements set forth in the EMRK or UNO Compact II. If the requesting State is not a "contracting state" to the EMRK, then in general one should rely on UNO Compact II to the extent that the latter provides protections comparable to those of the EMRK (BGE 123 II 511, Item 7d of the court's opinion, pp. 525 ff.). As mentioned hereinabove, in the event of a preliminary transfer, pursuant to Art. 74a Para. 3 of IRSG, assurance must be, provided that in the specific case the basic rights afforded by international law will be respected, in particular the due process guarantees pursuant to UNO Compact II. Accordingly, in the present case the requesting state must guarantee [in writing] that the judicial procedure used to determine whether the property will be restored or forfeited will satisfy the requirements of Art. 2 of IRSG. As discussed in more detail in the Federal Court Decision of Dec 10, 1997, [the Swiss government is justified in assuming that such a guarantee provided by the Philippines can be relied upon.

(5d) As discussed supra, most of the frozen property is fairly evidently the fruit of criminal activity, and the Swiss government has a substantial interest in Preliminary return of the Property [to the Philippine government]. Accordingly, based on Art. 74a Para. 3 of IRSG, the requirement for a final, dispositive, and enforceable decision [of the Philippine courts] may be waived, with the proviso that the Philippines government must guarantee that the decision as to restoral to the rightful owners (or forfeiture) of the property will be arrived at solely by a judicial procedure which satisfies the due process requirements of UNO Compact II. This means in particular that not only must the procedural rights of

the accused be guaranteed but also the procedural rights of the present Appellees who are formal custodians of the property.

(5e) Contrary to the argument of the present Appellees, subsequently to the revision of IRSG it is no longer necessary for the decision for restoral or forfeiture to be made in a criminal court. Art. 74a of IRSG requires merely that the restoral or forfeiture relates to property acquired through criminal activity (Para. 2) and is judicially ordered (Art. 74a Para. 3 of IRSG in combination with Art. 14 of UNO Compact II). It is irrelevant whether the procedure be a criminal procedure versus the accused or a separate procedure, and whether the jurisdiction be that of a criminal court, a civil court, or an administrative law court. Therefore it is not relevant that the Philippines characterized the forfeiture proceeding before the Sandiganbayan court as a "civil case" and that the case [in the Philippines] is being conducted under the rules of civil procedure.

6.

Assuming that preliminary transfer of the property is fundamentally possible, we must still inquire as to whether any rights of third parties pursuant to Art. 74a Paras. 4-5 of IRSG would be violated by the immediate such transfer.

(6a) The present Appellees invoke Art. 74a Para. 4(c) of IRSG. It is their view that, said Para. 4(c) should be relied upon because the parties in interest are not persons involved in a criminal proceeding. The description of the protected persons in Art. 74a Para. 4(c) of IRSG resembles the persons described in Art. 10 Para. 1 of IRSG (prior version prior to amendment), which protects the confidentiality

rights of "uninvolved third parties". The Federal Court has developed a very restrictive doctrine in this connection, according to which it is irrelevant whether the third party should be deemed a participant in the criminal acts in the sense of being a criminal defendant; rather, the test is whether there is a direct relationship between the given third party and the actions outlined in the request for intergovernmental cooperation (BGE 112 Ib 462, Opinion Item 2b, pp. 463 ff.; BGE 107 Ib 252, Opinion Items 2b and 2b(bb), p. 255). According to the holdings in these prior cases, a person who receives property which is the fruit of criminal acts essentially cannot be deemed an "uninvolved third party", regardless of whether the receiving of the property was in good faith (BGE 111 Ib 129, Item 3 of the court's opinion (not printed in the Reporter version)). These holdings do not directly apply in a situation according to Art. 74a Para. 4(c) of IRSG, which seeks to protect a good faith holder in due course of property subject to forfeiture. There must be an inquiry as to whether the third party is truly independent and not merely an intermediary of the accused, e.g. a merely formally independent juridical person which is in fact controlled by the accused, wherewith it is the accused who has ultimate power of disposition of the property which is the fruit of criminal acts (or substitute property therefor). In such circumstances the "good faith" status of the juridical person ought to be denied, in that the bad faith of the accused should be and is imputable to said juridical person. In the present case the Appellees are nominally the rightful owners of the disputed bank accounts; however, these entities were formerly controlled by Ferdinand Marcos, who had the actual power of disposition over the property, despite the formal legal independence

of the trust and the company [(Fondation Maler and Arelma Inc.)]. The present Appellees have not disputed these facts, nor have they credibly presented argumentation or evidence that the accounts were acquired from Ferdinand Marcos with Appellees as independent good faith acquirers.

[sic] for a pending criminal proceeding in Switzerland or is a subject of possible forfeiture in Switzerland. This issue is raised in the present case, because the Chief Cantonal Public Prosecutor of the canton of Geneva imposed protective orders of sequestration, pursuant to cantonal law, on the accounts of [Appellants] Fondation Maler and Arelma Inc. in SBV, Geneva, on Dec 20, 1990. In his letter to SBV, the Chief Cantonal Public Prosecutor stated the following:

> [in French:] "Obviously, if the competent authority for granting the request for intergovernmental cooperation (Letters Rogatory) orders the property subject to the measures in force [(viz. sequestration orders)] transferred to the Republic of the Philippines, the present sequestration is without a subject; you may execute the instructions of that [higher] authority without a new decision on my part. If, however, such transfer to the requesting State is refused [by said authority or a court having jurisdiction], you should deem the present sequestration to remain in force, and you must prevent the accounts from being restored to their nominal owners or to any third parties, unless and until the rights [of any such claimant] have been finally adjudicated [(in favor of said claimant)] in the forfeiture proceeding which will ensue."

It is seen from this that the Office of the District Public Prosecutor at Zurich correctly assumed that the Geneva freezing of the property has a subsidiary character, and does not prevent transfer of the property to the Philippines in a proceeding based on a request for intergovernmental cooperation.

7.

Finally, in the scope and context of the general discretion granted to the intergovernmental cooperation authorities pursuant to Art. 74a Paras. 1 and 3 of IRSG the question arises as to whether any rights of other persons not protected by Art. 74a Paras. 4 and 5 of IRSG justify denial of the request for intergovernmental cooperation.

(7a) As discussed in detail in the Decision of the Federal Court of Dec 10, 1997 (Item 7 of the court's opinion), in the present case [this Court] must weigh the interests of persons whose human rights were severely transgressed under the Marcos regime. The [U.S.] District Court of Hawaii on Jan 27, 1995 awarded such persons compensatory and exemplary damages amounting to US$1,964,005,859.90. These persons have claims for indemnity of damages and the right of fair process [sic] in prosecuting said claims, under international law (Arts. 2 and 14 of UNO Compact II, Arts. 14 and 16 of the UN Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Penalties, of Dec 10, 1984 (SR 0.105), and Philippine law (Art. III Sec. 12(4), Art. III Sec. 16 (amended), and Art. XIII Sec. 18(6), of the Philippines Constitution of 1987)). However, this does not create the inference that these persons have priority to have their claims satisfied out of the property which has been sequestered in Switzerland. Victims seeking relief generally must resort to either

a lawsuit versus the estate [of Ferdinand Marcos], if they seek to assert injury due to human rights violations for which Ferdinand Marcos was personally responsible during his period in office, or a lawsuit versus the Philippine government in which they seek indemnification for damages from wrongful conduct by organs of government. Although there is no direct connection between the subject of the intergovernmental cooperation proceedings and the human rights violations which underlie the damages awards by the U.S. District Court in Hawaii, nonetheless there are certain areas of overlap. The plaintiffs in that lawsuit [(in Hawaii)] are creditors of the Estate of Ferdinand Marcos, and as such are affected by any transfer of the property to the Philippines. The outcome of the intergovernmental cooperation proceedings affects their prospects (factually) of receiving damage amounts for the human rights violations which they suffered. On the other hand, the Philippine government is liable for indemnification of the victims, according to international law. The requested intergovernmental cooperation, if granted, will put the Philippine government in a position to decide the disposition of the disputed property which the victims claim as property which can be executed against to satisfy a [(the Marcoses' and other defendants')] liability. Taking into account the totality of the circumstances, it is justifiable to demand from the Philippine government that said government inform the Swiss authorities about the current state of the proceedings [(in the Philippines, in particular -- but may refer also to the proceedings in Hawaii and elsewhere outside the Philippines which give rise to a class of in rem claimants against the property)], and regularly report on all important developments thereconcerning -- not only involving judicial proc-

esses to determine restoral as against forfeiture, but also any arrangements or proceedings in the context of Art. 2 Sec. 2, Art. 2 Sec. 3, and Art 14, of UNO Compact II, or in the context of Arts. 12-16 (especially Art. 14) of the UN Convention on Torture, for compensating victims of human rights violations during the Marcos regime. This information will enable and trigger concurrent monitoring by the Upper House of the Swiss Federal Parliament (Bundesrat), which pursuant to Art. 41 of UNO Compact II, and Art. 30 of the UN Torture Convention must be duly advised of all developments.

(7b) The decision is not altered by the legal proceedings in the U.S. which are connected with the claims for damages of the torture victims, or by the burdens on the Swiss banks which derive from those legal proceedings. As a basis for this [conclusion], reference is made to the Federal Court Decision of Dec 10, 1997 (BAP v. Aguamina Corp.) (Item 7d of the court's opinion).

8.

(8a) It follows from the preceding that it was lawful and proper for the District Public Prosecutor of Zurich to order that the property be returned to the Philippines. However, along with the granting of the request for intergovernmental cooperation it is necessary to attach the condition that the Philippines guarantee that the procedure to determine whether the property will be restored to its rightful owners or will be forfeited will be entirely a judicial procedure which is in accordance with procedural fundamentals set forth in UNO Compact II, and that the Swiss authorities will closely monitor the state of affairs in said procedure and in any arrangements or proceedings to provide relief to victims of human

rights violations under the Marcos regime. The Federal Court has jurisdiction over these conditions, as a matter of first instance at the appellate level (so-called "appellate instance") (Art. 80p Para. 1 of IRSG). The Judgment of the Zurich Superior Court which is being appealed [here] should therefore be reversed; the Orders issued by the Office of the District Public Prosecutor [of Zurich] should be expanded to encompass the aforementioned conditions, and in general said Orders should be confirmed and upheld.

(8b) With this outcome of the proceedings, the present Appellees should bear the court costs (Art. 156 Para. 2 of OG), but neither party should bear the other's general litigation costs (Art. 159 Para. 2 of OG).

THEREFORE the judgment of the Court is as follows:

1. Judgment is granted in favor of the Appellant in this administrative law appeal, and the judgment of the Superior Court of the canton of Zurich of Feb 20, 1997 in the case styled Fondation Maler and Arelma Inc. v. the Office of the Chief Cantonal Public Prosecutor of the canton of Zurich (UK950184) is reversed. The case is remanded to the Cantonal Superior Court for reallocation of the costs of the proceedings in said court.

2. The Orders issued by the Office of the District Public Prosecutor for District IV [(Zurich)] in the canton of Zurich, dated Aug 21, 1995, relating to SBV (Schweizerischer Bankverein) in Geneva are confirmed, and are expanded by the following Conditions:

(2a) The government of the Philippines shall guarantee that the decision concerning the restoral of the subject property to its rightful owners (or the forfeiture of said property) shall be made in a judicial procedure which is in accordance with the basic procedural requirements set forth in Art. 14 of the International Compact on Civil and Political Rights of Dec 16, 1966 (UNO Compact II).

(2b) The government of the Philippines shall inform the Swiss authorities concerning the current status of, and shall regularly report to the Swiss authorities concerning significant developments in:

-- judicial processes relating to the restoral or forfeiture [of the property which is the subject of the present case]; and

-- arrangements or proceedings for providing relief to the victims of human rights violations during the Marcos regime (Art. 2 Sec. 2, Art. 2 Sec. 3, and Art 14, of UNO Compact II, and/or Art. 14 and Art. 16 Sec. 1 of the UN Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Penalties, of Dec 10, 1984).

3. The court costs of 5,000.00 Swiss francs shall be borne by the present Appellees, with allocation among them as among persons having joint and several liability.

4. Copies of the present Judgment shall be transmitted to:

-- BAP (Swiss Federal Office of Police Matters), Bureau of International Intergovernmental Cooperation;

-- The present lead Appellees

[(Fondation Maler, and Arelma Inc.));

-- The District Public Prosecutor's Office of District IV of the canton of Zurich;

-- The Office of the Chief Cantonal Public Prosecutor of the canton of Zurich;

-- The Superior Court of the canton of Zurich; and

-- The Republic of the Philippines.

At Lausanne, Dec 19, 1997.

On behalf of the First Public Law Division of the
Swiss Federal Court.
/s, illegible/, Presiding Judge.

/s, completely illegible Clerk of Court.

[ink seal:] Swiss Federal Court.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Case No. CV00-595-R

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., *ET AL.*,

Defendants.

JUDGMENT

This case came on for trial before this Court, sitting without a jury, February 23, 2004, and the Court, having heard and considered the evidence, both oral and documentary, any stipulations of the parties, and the argument of counsel, having filed the finding of fact and conclusions of law applicable to this case pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

The Court orders judgment for claimant Mariano J. Pimentel and the Class of Human Rights Victims in MDL No. 840.

The Court further orders the Clerk of Court to forthwith transfer the interpleaded assets to the ac-

count in the Clerk's Office established in MDL No. 840 subject to further order of this Court.

Dated: July 12, 2004.

s/ Manuel L. Real
MANUEL L. REAL
UNITED STATES
DISTRICT JUDGE

APPENDIX I

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04-16503
(Dist. Ct. No. CV00-595MLR)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

v.

ARELMA INC., *[ET AL.]*,

Appellants.

DEFENDANT-APPELLEE PIMENTEL'S MOTION TO DISMISS THE APPEAL OF NONPARTIES THE REPUBLIC OF THE PHILIPPINES AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

Defendant-Appellee Mariano Pimentel moves this Court to dismiss the appeal filed by the Republic of the Philippines (the "Republic") and its Presidential Commission on Good Government ("PCGG"). Neither the Republic nor the PCGG has standing to appeal under Article III of the United States Constitution or the decisions of this Court since each is a nonparty to this proceeding and the issue they wish to raise has been decided by this Court in their earlier appeal.

I. Background

The Republic and PCGG were named as defendants in an interpleader lawsuit filed by Plaintiff Merrill Lynch, Pierce, Fenner & Smith in September 2000. The lower court dismissed the Republic and PCGG on the ground they were not real parties in interest. This Court upheld the dismissal on the ground that they were entitled to sovereign immunity. *In re Republic of the Philippines*, 309 F.3d 1143, 1151 (9th Cir. 2002). This Court found these nonparties were "necessary" under FRCP 19(a) based solely on their naked and unsubstantiated claim that Ferdinand E. Marcos misappropriated the assets on deposit with the lower court.

On remand to the lower court and without intervention by the Republic and PCGG, that court made detailed findings of fact, including:

- any claim by the Republic or PCGG would be barred by the applicable statute of limitations.

- expiration of the applicable statute of limitations precludes a "necessary" party from having a legally protectable claim;

- trial of the interpleader action cannot "impair" the Republic's and PCGG's claim; the Republic and PCGG made a strategic decision not to participate in the interpleader litigation even though they participated in over a dozen lawsuits in the United States involving purported Marcos assets; and

- the Republic and PCGG are not indispensable parties to the litigation.

See Ex. A.

Nonparties Republic and PCGG immediately appealed the lower court's interlocutory ruling pursu-

ant to 28 U.S.C. §1292(b). In a Memorandum decision entered February 20, 2004, this Court affirmed the action of the lower court finding that it properly exercised its discretion in concluding that the absence of "necessary" parties did not impair the action from going forward. *See* Ex. B. Following pretrial *in limine* hearings, the lower court conducted a non-jury trial on February 24, 2004 among "the remaining parties to the interpleader. There were no live witnesses. The parties introduced deposition testimony and exhibits. The lower court continued the trial to permit review of the evidence. Following the submission of each party's proposed findings of fact and conclusions of law, the lower court at a hearing on July 12, 2004 read and entered its own findings and conclusions and entered Judgment. *See* Ex. C. Appellee Pimentel and the Class of Filipino Human Rights Victims were awarded the interpleaded assets.

Four (4) days after entry of the lower court's Judgment, nonparties Republic and PCGG filed the instant appeal. *See* Ex. D. In their docketing statement, the sole issue raised is whether the action should have been dismissed in its entirety because the Republic and PCGG were indispensable parties. *See* Ex. E.

II. Argument

It is axiomatic that only parties to an action have standing to appeal under Article III. *Karcher v. May*, 484 U.S. 72, 77 (1987); *United States v. City of Oakland*, 958 F.2d 300, 301 (9th Cir. 1992). The Republic and PCGG, by virtue of their choice and strategy to invoke sovereign immunity, ceased being parties to the litigation in 2002, if not earlier. This Court has held that sovereign immunity entails not only

immunity from liability, but immunity from the burden of participating in litigation. *See Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 305 (9th Cir. 1997). Contrary to the very benefit the Republic and PCGG achieved by invoking sovereign immunity, they now wish to meddle in the ongoing litigation and prejudice the rights of 9,539 Filipino human rights victims who have proven their entitlement to the interpleader assets. This they cannot do.

In a case directly on point, this Court held that a party dismissed from litigation has no standing to appeal. *Planned Parenthood of the Columbia/Willamette. Inc. v. American Coalition of Life Activists*, 244 F.3d 1007, 1014 n.6 (9th Cir. 2001). There a defendant dismissed early in the litigation sought to appeal an injunction. This Court struck the appeal saying "... she has no independent standing to appeal."

While this Court has articulated an exception to the general rule on appellate standing, *see SEC v. Wenke*, 783 F.2d 829, 834-35 (9th Cir. 1986)("exceptional circumstances"), this exception is inapplicable to this litigation. Two years after *Wenke* the United States Supreme Court held that a non-party should have intervened in the litigation in the lower court in order to have standing to appeal a final judgment. *See Marino v. Ortiz*, 484 U.S. 301 (1988) Whether there is any vitality left in the *Wenke* exception following the *Marino* decision is debatable. What can be said with certainty is that where a non-party could have intervened but chose not to do so, *Marino* controls, not the *Wenke* exceptional circumstances test. Here the Republic and PCGG could have waived their sovereign immunity pursuant to 28 U.S.C. 1605(a)(1) or sought to intervene under

Fed.R.Civ.P. 24 but their strategy was to try to shut down the litigation by insisting on immunity.

The lower court specifically found that "[t]he Republic and its PCGG made a strategic decision not to participate in this litigation even though they have participated in over a dozen lawsuits in the United States involving purported Marcos assets." See Ex___. The lower court relied in part on this Court's decision in *Citibank International v. Collier Traino Inc.*, 809 F.2d 1438, (9th Cir. 1987)(J. Schroeder) where this Court denied standing to appeal to a non-party (instrumentality of Libyan government) that was invited to participate in the lower court proceedings but chose not to. In reasoning that reverberates in this litigation, this Court stated:

> It [appellant] could have either appeared in this action or sued independently to enforce the obligation on the letter of credit. It chose not to do so because it feared subjecting itself to the jurisdiction of the district court on related claims. While we do not fault that strategic election, we must hold that the appellant must accept the disadvantages as well as the advantages that flow from it.

Id at 1441. *See also Washoe Tribe of Nevada and California v. Greenley*, 674 F.2d 816 (9th Cir. 1982)(J. Schroeder participating)(" ... we find no equities in favor of permitting an appeal by the State. The State did not intervene below when it clearly could have."). As nonparties, the Republic and PCGG cannot immunize themselves from the litigation and then selectively participate in the litigation by appealing the results.

Lack of standing would exist even were this Court to apply the *Wenke* exceptional circumstances test. Neither *res judicata* nor collateral estoppel from the lower court's final Judgment will apply to the Republic and PCGG. See Ex. ____. Neither the Republic nor PCGG participated in the trial. While it is certain that neither the Republic nor PCGG have a legally protectable interest in the assets on deposit with the lower court, should either ever obtain a judgment against the Marcoses related to those assets, each has judicially attached assets of the Marcoses in the Philippines that could be used to satisfy a judgment.

Moreover, the sole issue these nonparties wish to raise on appeal — whether they are indispensable parties under FRCP 19(b) — was decided against them in this Court's Memorandum Decision of February 20, 2004. This Court affirmed the decision of the lower court finding that the lower court properly exercised its discretion under FRCP 19(b) in concluding that the absence of "necessary" parties did not impair the action from going forward. This Court's finding is now the law of the case. There is no right to successively appeal the same issue in hope of receiving a different decision. As this Court said in *Kimball v. Callahan*, 590 F.2d 768, 771 (9th Cir.), *cert. denied*, 444 U.S. 826 (1979), "[u]nder the law of the case doctrine, one panel of an appellate court will not as a general rule reconsider questions which another panel has decided on a prior appeal in the same case."

III. Conclusion

For all the foregoing reasons, the Republic and PCGG's appeal should be dismissed.

Respectfully submitted,

DATED: Aug. 13, 2004

/s/ Robert A. Swift
ROBERT A. SWIFT
KOHN, SWIFT & GRAF, P.C.
One South Broad Street, 21st Floor
Philadelphia, PA 19107
(215) 238-1700

SHERRY P. BRODER
841 Bishop Street, Suite 800
Honolulu, HI 96813
(808) 531-1411

JON VAN DYKE
2515 Dole Street
Honolulu, HI 96822
(808) 956-8509

Attorneys for Defendant-Appellee Pimentel and the Class of Filipino Human Rights Victims

APPENDIX J

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Case No. CV 00-595-R

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Plaintiff,

v.

ARELMA INC., *ET AL.*,

Defendants.

AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Amendment is to correct an omission in the Finding of Facts filed July 12, 2004.

[Finding] of Fact Fourteen (14) is amended to read as follows:

14. The account of Merrill Lynch was funded by Arelma with a deposit of $2,000,000 in 1972. (Jt. Pretrial Stip.; Ex. 8 and 9; Sunier Dep. 60) The Source of those funds was Ferdinand E. Marcos. There is no evidence presented as to where and how Ferdinand E. Marcos obtained the funds when he ordered two million dollars $2,000,000 [deposited] in [account] No. 165-07312 at Merrill Lynch in New York in 1972.

Conclusion of Law is twenty (20) amended to read

20. The judgments of Golden Budha and Estate of Roxas are against Imelda Marcos, not Ferdinand E. Marcos or his Estate. The proceeds of the amount of Merrill Lynch deposited in this Court are the property of Ferdinand E. Marcos.

DATED: August 24, 2004.

s/ Manuel L. Real
MANUEL L. REAL
UNITED STATES
DISTRICT JUDGE

APPENDIX K

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 04-16401, 04-16503, 04-16538

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, * * *

Plaintiff-Appellee,

MARIO PIMENTAL [*sic*],

Defendant-Appellee,

v.

ENC CORPORATION; *ET AL.*,

Defendants,

and

ARELMA, INC., * * *

Defendants-Appellants,

D.C. No. CV-00-00595-MLR
District of Hawaii, Honolulu

ORDER

Filed Oct. 5, 2004

Before: Peter L. Shaw, Appellate Commissioner

The motion to consolidate these appeals is granted. Appeal Nos. 04-16401, 04-16503, and 04-16538 are consolidated.

Appellee Pimental's motion to dismiss appeal no. 04-16503 for lack of jurisdiction is denied without prejudice to renewing the arguments in the answering brief. *See National Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel can consider appellate jurisdiction despite earlier denial of motion to dismiss).

The following briefing schedule shall govern these consolidated appeals: the consolidated opening briefs are due November 1, 2004; the consolidated answering briefs are due November 29, 2004; and the consolidated optional reply briefs are due December 13, 2004. All parties on a side are encouraged to join in a single brief to the greatest extent practicable. *See* 9th Cir. R. 28-4.

s/Peter L. Shaw
General Order 6.3 (e)

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MDL No. 840
No. 86-390
No. 86-330

IN RE:
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION

THIS DOCUMENT RELATES TO:
Hilao et al. v. Estate of Ferdinand E. Marcos,
and
DeVera et al. v. Estate of Ferdinand E. Marcos.

ORDER

The Court has carefully reviewed Class Counsel's Motion for an Interim Award of Attorneys' Fees and Reimbursement of Expenses, their memorandum and exhibits in support thereof and the letters of class members commenting thereon. The Court orders as follows:

1. The Fund derived from execution on the Judgment in this action has assets of approximately $36.4 million, of which in excess of $1.6 million derives from collections other than in *Merrill Lynch v. Arelma*.

2. The expenses of Class Counsel are approved for partial payment in the amount of $753,000 from non-*Arelma* collections.

3. The fees and expenses of the Special Master, Sol Schreiber, are approved for payment from non-*Arelma* collections upon submission to the Court of a detailed invoice.

4. Class Counsel are awarded interim counsel fees of 10% of the Fund payable upon issuance of the mandate (the "Mandate") of the Court of Appeals per its Order of June 22, 2006 in the appeals in *Merrill Lynch v. Arelma*.

5. Upon issuance of the Mandate, Class Counsel shall distribute the sum of $2,000 to eligible Class members on a *per capita* basis. Eligible Class members are those Class members who submitted claim forms in 1993 and 1999.

Dated: Honolulu, Hawaii, June 26, 2006

BY THE COURT:

s/Manuel L. Real
MANUEL L. REAL
MDL 840 Transferee Judge